Y4. In 2/11: Am 3/v. 4

94-2

[COMMITTEE PRINT]

U.S. SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

NOVEMBER 19, 20, 21, 22, AND 23, 1976

WASHINGTON, D.C.

VOLUME 4

UNIVERSITY OF FLORIDA LIBRARIES
JUN 19
DOCUMENTS DEPT.

Printed for the use of the
U.S. Senate Select Committee on Indian Affairs

[COMMITTEE PRINT]

U.S. SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

NOVEMBER 19, 20, 21, 22, AND 23, 1976

WASHINGTON, D.C.

VOLUME 4

Printed for the use of the
U.S. Senate Select Committee on Indian Affairs

U.S. GOVERNMENT PRINTING OFFICE
82-749 WASHINGTON : 1977

SELECT COMMITTEE ON INDIAN AFFAIRS

[Created by S. Res. 4, 95th Cong.]

JAMES ABOUREZK, South Dakota, *Chairman*

HOWARD METZENBAUM, Ohio	DEWEY F. BARTLETT, Oklahoma
JOHN MELCHER, Montana	MARK O. HATFIELD, Oregon

ERNEST L. STEVENS, *Staff Director*

CONTENTS

Meetings of the American Indian Policy Review Commission

Page

November 19, 1976 1
November 20, 1976 71
November 21, 1976 135
November 22, 1976 185
November 23, 1976 239

Digitized by the Internet Archive
in 2013

http://archive.org/details/mameric00unit

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

NOVEMBER 19, 1976

Rayburn Building,
Washington, D.C.

Present: Senator James Abourezk, chairman; Congressman Lloyd Meeds, vice chairman; Senator Lee Metcalf, Commissioner Ada Deer, Commissioner John Borbridge, Commissioner Adolph L. Dial, Commissioner Louis R. Bruce, and Commissioner Jake Whitecrow.

Staff Director: Mr. Ernie Stevens.

Administrative Assistant: Ms. Ernie Ducheneaux.

Commission staff: Paul Alexander, Peter Taylor, Ray Goetting, Donald Wharton, Charles Wilkinson, D'Arcy McNickle, Gil Hall, and Pat Zell.

Chairman Abourezk. The meeting of the American Indian Policy Review Commission will come to order.

The first thing that I would like to do, I think while we have had a lot of problems, many difficulties in the past couple of years since this Commission has been operating, we have been able to overcome most of them; and to get us over the rest of the way, I want to ask at the suggestion of Commissioner Jake Whitecrow, that we get an invocation from Rev. Phil Beaumont, and if you would like, just stand where you are and give us a little opening prayer. We would sure appreciate it.

Reverend Beaumont. If I may be here for this fine country of our's, God has given me a language which has come down to this moment and I would like to revert to that language as I do in everyday and offer a prayer for the Commission, for the fine people of our country, for the leaders and in this language that I know.

[Whereupon the Reverend Beaumont offered a prayer in his native dialect.]

Chairman Abourezk. Thank you very much, Reverend Beaumont. Is that the Crow Tribe?

Reverend Beaumont. Yes.

Chairman Abourezk. Thank you.

I would like to ask the clerk to call the roll to establish the presence of a quorum of the Commission.

Ms. Ducheneaux. Commissioner Borbridge?

Mr. Borbridge. Present.

Ms. Ducheneaux. Commissioner Bruce?

Mr. Bruce. Present.

Ms. Ducheneaux. Commissioner Deer?

Ms. Deer. Present.

Ms. **Ducheneaux.** Commissioner Dial?

Mr. **Dial.** Present.

Ms. **Ducheneaux.** Senator Hatfield? [No response.]

Congressman Meeds?

Mr. **Meeds.** Here.

Ms. **Ducheneaux.** Senator Metcalf? [No response.]

Congressman Steiger? [No response.]

Commissioner Whitecrow?

Mr. **Whitecrow.** Here.

Ms. **Ducheneaux.** Congressman Yates? [No response.]

Senator Abourezk?

Chairman **Abourezk.** Here.

How many members present?

Ms. **Ducheneaux.** Seven.

Chairman **Abourezk.** Seven.

Is that a quorum?

Ms. **Ducheneaux.** Yes.

Chairman **Abourezk.** 'All right.

A quorum is present, seven members of the Commission are present.

I wanted to give just a very brief opening statement, and I will ask other members if they have anything that they would like to say; but I am going to ask Ernie Stevens, the director of the Commission, to outline the procedures in just a moment.

But, I want to say that we have come to the end now, or very near the end, of a very difficult—at times—2-year period whereas we have advertised this as the only time in the history of this country that the Indian people themselves have really written their own policy and I think that is what it is going to be.

The staff has not been entirely Indian, it has been overwhelmingly Indian though, and the Commission members, especially the Indian members have very faithfully attended every meeting.

They have a much better attendance record than the non-Indian Commission members and the controversies that have surrounded this Commission were to be expected; because anyone who looks through the past history of Indian politics and has seen the controversy embroiled through the last century or so, you would have to expect that we would be controversial.

I have to say this, that I think everybody has tried to the best of their ability. I don't know of anybody who has not tried to the best of their ability, and we just have a short time more to go, a month or two, before we finish this process.

And, I have to, first of all, before we begin this markup session, express my thanks to everyone who has been involved.

Lloyd Meeds had a very tough election fight. He doesn't know the outcome for sure yet, but I am confident he is going to win it. And, it's been especially tough on him, who has had more pressures on him than any of the rest of us, and I have to say that I sincerely appreciate his position and appreciate the work that he has done. His attendance has been very dedicated and faithful, and the amount of work and contribution he has made, the ideas, have all been invaluable to this commission.

So far as the outcome, the results of this final report and recommendations are concerned, we are all hopeful that every recommendation will be implemented into law, either by Executive order or by legislation.

Now, I have to say that I had indications from Carter's people during the campaign that they were willing to adopt the interim report we issued on the BIA management study. They would like the reorganization aspect of it and I think that we can most—I am not speaking for Carter, I am just saying from the talk I had with his people during the campaign that they are interested in adopting at least that portion of it.

So, if that happens, we have at least fulfilled a great part of our mission.

Insofar as the rest of it is concerned, it depends on the quality and the nature of the recommendations and when that happens, we're going to know how well we have done our work.

And, we are hopeful that in the end, and I think there are signs of it, that the Indian community will somehow come together and unite even though they may not agree with all the recommendations of this report.

You have to keep in mind it is being written by and large by the Indian community and we hope that the Indian community will be able to unite, because there may not be another chance for quite sometime similar to this one.

So, again, I would like to express my thanks to the commissioners, to everybody who has worked on this, to those people who have supported it, and I suppose I should even thank those people who have opposed us, because they have kind of kept us on our toes and made us, I think, do our jobs better.

I would like to ask the vice chairman, Congressman Meeds, if he would like to say anything.

Congressman MEEDS. If I can get myself from behind this pile of books and work I would just like, Mr. Chairman, to compliment you on your faithful attendance and conduct at these commission meetings. Also, I would like to compliment all of the other commissioners, particularly the Indian commissioners who have been very faithful in their attendance; and to all of those people who worked so diligently on these task forces. Some of them have, I think, turned in excellent work, others work is not what I would consider excellent, but they are in a better position to understand some of the things that they were doing than I am.

I am not going to pass any judgment on any of the work until such time as we have had an opportunity to discuss it here. But, I think it is sufficient to say that everyone has worked very hard. Everyone has worked diligently and has turned in work which I think does credit to the individuals and to the original concept of this commission.

And, I am sure that we are going to have a good result.

Thank you, Mr. Chairman.

Chairman ABOUREZK. Thank you.

Does anybody else have anything they would like to say before we get underway?

Commissioner Jake Whitecrow?

Mr. WHITECROW. Thank you, Mr. Chairman.

On behalf of myself as one individual commissioner serving on this Commission, I want to take this opportunity in initiation of our session here to review all of the various reports that have been submitted by the various task forces, that this particular day is in my opinion a landmark day in the history of the American Indian.

It has been a privilege to have served on this Commission and certainly, I am not indicating that I feel that our work is done.

I think our work is just beginning, even after we complete our final markup and the presentation of our report to the Congress.

I want to also take this opportunity to thanking the staff for the tremendous amount of hours, tremendous amount of work that has gone into this and I don't think we should slide all of our tremendous amount of clerical assistance that we have received, all of the fine people that have served us well down through this past year and a half, presenting us with all of our needed materials and getting out and cranking out all of the vast amount of workload that we have received; and imposed upon us this vast amount of reading that has been a requirement of serving on this Commission.

I do feel that this is a beginning, as I said, of a tremendous amount of work that is coming up into the future. I do not feel that the Indian people totally are in a position to accept all of our recommendations at the present time.

I feel that they do need an additional opportunity to look at the report that we submit. I feel very definitely and very strongly in the fact that we as a commission, these next few days, give strong consideration of extending for a month or two, our period of submitting our final report to the Congress because what we are doing in effect is requesting the Congress of the United States to now lay it on the American Indians in such a manner so that we can develop the next 50 to 100 years of relationships.

I sincerely feel that in order for the American Indian around the Nation to have the opportunity to look at our total report, prior to submission, is most important to our work schedule, and I will be recommending that we do extend that period of time, whatever it might take.

I am knowledgeable about the fact that it possibly could take an amendment to the legislation that established this commission and I do feel that it could be extended with any additional cost insofar as the budget is concerned.

Chairman Abourezk. How long did you say, Jake?

Mr. Whitecrow. I would recommend a minimum of 2 months in order that the national Indian organizations around the country and that the tribes around the country would have an opportunity to review our final report prior to submission, so that when the Indian people come before the various committees in Congress, then they will have that all together. They will have unity, hopefully, in the support of our work.

Chairman Abourezk. If I can comment. That probably would be the most desirable thing to do, but I think in terms of getting it on the initial rush of legislation—well, you know how these honeymoon periods go with the new President and the Congress. We might have a better chance of passing some of these reorganization things at least if we get them in right in the beginning.

And, if we delay too long, I wonder if we might not get left out in the cold, because—I'm not predicting this, mind you, but historically, any new President has, you know, a 90 or 100 day honeymoon period and after that the Congress starts attacking him and he starts attacking the Congress.

I know I talked to one Senator from a far State who says he has got a press release prepared to attack the Secretary of Agriculture. He has just left the name blank, waiting to fill it in, and as soon as he is appointed, he is going to attack him.

So, I don't know how much leeway we've got is what I'm saying; but anyhow, I think the suggestion itself, everything else being equal, is not a bad one.

It is just that we might get ourselves in a bind if we do try to do it, but it is something we ought to discuss.

Are there any other statements? If not, I am going to call on the staff director, Ernie Stevens, to give us the procedural outline and I want to state, as long as we are congratulating each other, that I have got to say that most of the credit for the work done on this Commission and the work yet to be done has to go to Ernie Stevens.

He is a guy who has been walking a tightrope for probably longer than 2 years, but so far as our experience goes, he has been walking the Indian Commission tightrope and has done it extremely well. And, he has done it through his great talents, his abilities, and just plain perseverance and hard work. I have never had to get Ernie's home telephone number to talk to him because every time of day or night when I wanted to talk to him I just called the office and he is there; and I think everybody who deals with him knows that.

The only thing I don't understand Ernie, you haven't lost any weight as a result of all that hard work. What is it?

Mr. STEVENS. I'm a compulsive eater.

Chairman ABOUREZK. But I think it should be on the record now that Ernie, in my view, has done an excellent, outstanding job. Ernie, do you want to go ahead?

Mr. STEVENS. Yes, sir.

I want to explain how the materials are organized. We have organized the work so that the agenda coincides with the tentative final Commission report outline.

The addendum, the short one here, is the same outline that was tentatively approved for the final Commission report. The large work book follows the agenda. It is by chapter. The task force citations under the heading "Findings and Recommendations" that read T.F. 2/98 mean Task Force 2, page 98.

We have Commission task force reports here. You have the summaries on the desk in front of you. That's the other large book. Those are summaries with no comment about the task force reports.

The task force reports themselves are at each end of the rostrum and people assigned to the Commissioners. If a Commissioner wants to look at a specific citation, the assigned person will bring that task force report forward. If the citation reads S–28, that means Summary, page 28. And S 2/28, would mean Summary Task Force 2, page 28.

You do have the summary book in front of you. The staff prepared the subject matter index, cataloged all findings and recommendations under appropriate subject headings. But there was so much material (you can just see in the summary material) that much documentation and some of the resource materials you may need are not right in front of you.

But we have staff people assigned, and they know where to find whatever you may need. In a particular case, the law itself, we have the attorneys here who know the subject matter, and if they don't know it right off the top, they can have access to it.

The work book has been developed, based on the organized findings and recommendations of the task force report. In addition, we have also included the special travel reports to the Commission received to date.

As you know, we have received excellent reports from many tribes. I can't mention all of them. The Creeks, Northwest Affiliated. I would say that one of the questions I had within our own staff was why Northwest Affiliated was able to deal with issues, conclusions and recommendations specifically in a very short timespan, and on the other hand, some of our own people had a difficult time doing that. Northwest laid them out by the numbers and submitted a beautiful report.

Their report was about that thick. We have 10 or 11 tribal reports. One of them being prepared now is the Crow Tribe's report. It is being printed right now. Phil Beaumont, the person who opened the meeting, is the head of the planning for the Crow Tribe. We were glad to receive their report because we have some gaping holes in the natural resource parts of our requirements, and hopefully the Crow, Standing Rock and some of the other tribes who have land and resources will be able to help us out in this area.

We have developed each chapter with a format which includes a background statement first. The background statement is just a short summary of the background of the subject matter of the chapter. The issue statements then follow; they are the fundamental issues related to that subject.

Then the cataloged findings (arranged for readability) with staff comments, as needed, are next. At the end of the section, comments are provided as follows: (A) Support and Consensus. Each chapter will end with remarks about whether the findings and recommendations were supported and whether a consensus was reached. There is a critique of the findings and recommendations in each section.

The next category is "Gaps." This particular area is self-explanatory.

Next is the Achievement of Goals. This calls for a separate explanation and I will get to it in a second.

The staff put together seven major goals, based on the overall picture, that it felt should be discussed by the Commission.

Then, compliance with Public Law 93–580—A statement of compliance to the requirements of section 2 of the act, is included.

We found in most cases there was much overlap. Most parts of the act were covered, but there was some question in some cases as to the depth of coverage.

Then there is the Staff Statement. It is a short narrative commenting on the material provided in each section, from staff perspective. Then, there's the final statement under the heading of "Recommended

Commission Action." We tried very hard to form a consensus of what was there. I know I did that with the budget. However, at the bottom line, we called them Principles.

My own feeling is that the Commission may or may not approve those principles. They could give them to the staff as kind of a guiding tentative principle and the Commission may or may not accept the thing.

I would like to say that I talked to Congressman Yates yesterday. First of all, he wanted to be at the next meeting but he did not like the date. The other thing was, he said he would appreciate it if we wouldn't lock anything at this time. Whatever that means.

But he is very interested. And of course, Senator Hatfield had an operation and Senator Metcalf is just arriving.

So, this section provides staff recommendations for Commission action. In most cases we feel that if the subject is not developed adequately the Commission can decide on a set of principles which will furnish guidance for further analysis and in some cases, further study.

There is so much material that was not covered. Some of it we can retrieve, such as in the case of natural resources. Some of the specific things deal with facts and documentation related to economics; in the case of land acquisition, in the case of the potential for natural resource development and so on.

We do have that in our files and one of the things that I found in the task force presentation is that some of the things that are missing we do have on hand, and it only calls for analysis and we can only know, over the next month to what extent we could do that.

But for the most part, the people on our staff have taken a very realistic view of what gaps we can cover. But, in any case, that section will state what those gaps are. The material is prepared so that we will merely have to amend the workbook after each meeting to keep the deliberations and the main source book up-to-date.

The Secretary has a list of the commissioners, and in the case of a vote she will take down the exact language. If there is a difference and if there were a vote, we would record the names and which way each votes, if you so wish. We have a form for that purpose.

Chairman ABOUREZK. In other words, you have one person assigned when we are changing language and so on. One person will be in charge of the final copy as we have agreed; is that correct?

Mr. STEVENS. Yes, sir.

Chairman ABOUREZK. Who will do that?

Mr. STEVENS. Ernie Ducheneaux.

Chairman ABOUREZK. Ernie will also record the votes if there are rollcalls?

Mr. STEVENS. Yes, sir.

Chairman ABOUREZK. All right.

Mr. STEVENS. Some of the page numbers may need to be fixed a little bit, but each chapter for the most part, is numbered separately, because they were being developed independently.

We will make amendments on the basis of the action you take or when we strike or substitute or add on material, we will do that by page number. The transcript is being taken.

However, Ernie is taking this in shorthand and we will be able to, within a week, print up page changes, so all that is necessary is to change the pages.

Chairman ABOUREZK. And you will match it up with the transcript, match up what Ernie had done with the transcript?

Mr. STEVENS. Yes, sir. We will double check it, but we need to start early to try to start working on it.

The first draft will be accomplished. The only other material is the actual draft, whatever you decide to start doing with that. You know, there are a couple of sections, such as the prolog and D'Arcy McNickle's section. D'Arcy has prepared approximately a 117-page overview of the development of Indian policy; and it would come down to 30 or 35 pages, I believe, printed in the book.

We feel that in order for people to address the whole subject of Indian affairs, one of the first things you have to do is understand the genesis and the development of the policy; what took place in history, in law, and so on. So, D'Arcy has been commissioned to do that. He is here, and that is one of the things that is done because it is a matter of history and record.

It should be emphasized that our documentation, even related to the law itself, is voluminous. We could not even summarize adequately what we have on hand. We have one of the chief features, I think, or one of the things in the coming years will be that we have an incredible amount of really beautiful material, and even with the task force nine report, which was three volumes—almost all their chapters had major points, which are backed up by entire books practically, and so——

Chairman ABOUREZK. I have another question, Ernie.

I don't know if it was announced to me this morning that our counsel Kirke Kickingbird has resigned and is no longer with the Commission; is that correct?

Mr. STEVENS. Yes, sir.

Chairman ABOUREZK. Is he working as a part-time counsultant or anything like that?

Mr. STEVENS. If we can make him, is it possible to have him as special counsel? He is in town, and as a matter of fact, he is right over there, and he has said he will make the time to fill in whenever we need him on some of these things.

If there is a way we could make him a special counsel on an as-needed basis——

Chairman ABOUREZK. I have one question that concerns proxy voting now during these business meetings. I can never remember what our rules said about proxy voting. We haven't used them up to date, I know, but what is the situation, the situation so far as the rules are concerned?

Well, when you look it up, give us a signal so we can find out.

Mr. STEVENS. Kirke and Max can do that. We asked the different offices about proxies. Congressman Yates, at that—you know, he would rather do it himself. I was trying to figure out how to say it.

Chairman ABOUREZK. Fair enough.

Mr. STEVENS. One of the things that we have, and I think I will just state these goals, and I wanted to emphasize and tell people that there is a lot of fast growing interest in what we are doing, and most of it is positive and even the criticisms are positive in that we get some kind of a way to compare the task force reports.

But our staff would prefer to have bold outlines to certain extents, so at least we can know what the ball park policy is that you are developing. I would suggest, personally, that possibly a whole session later on could be devoted for the specific voting.

What we need is for staff to develop some broad kinds of materials, or the kinds of materials that are really in consensus in some way, and they could always be struck or altered as you so wish, but we can proceed on that basis.

We developed some broad goals and they were kind of as a result of all the different principles that came through in the recommendations.

Without regard to what I personally feel about it, this is how it came out and was rethought. If the chairman so desired, possibly, the Commission could discuss these broad goals. If we had them or something like them, you know, however you want it, we would have something to deal with as a general kind of philosophy.

These goals are a reaffirmation of commitment on tribal sovereignty and the strengthening of tribal government. Two, affirming the permanency of tribal government. That, coincidentally has to do with the prolog part, and I didn't develop that prolog further because I felt at least for the record the Commission ought to say that, you know, that's the kind of thing they wanted.

The prolog calls for a recognition of the permanency and the right of the Indian people to be separate and apart and different from other people and that is the gist of it; and if the Commission were to so desire, we could continue to develop the prolog along those lines. But I think the Commission ought to tell us that. Then we can proceed. Third is the reaffirmation of the trust relationship between the Federal Government and the tribes, and improvement in the mechanisms for Federal enforcement and protection. The Federal Government in this relationship should be prohibited from unnecessary interference with tribal self-government.

Four, a strong commitment to meet the needs of the tribes for economic development, including a sufficient land base.

Five, the delivery systems for services to Indian peoples should operate effectively, with optimum Indian input, and not exclude individual Indians, because of geographical status.

Six, there should be a strong commitment to upgrade the standard of living of Indians to that of the Nation generally. And southern tribal existence, based on the maintenance of tribal identity, should be the basis for the Federal-Indian relationship.

Tribes terminated or nonrecognized, meeting such existence criteria should be eligible for the Federal recognition and Federal services without a diminishment of services or responsibilities to currently recognized tribes.

Mr. Chairman, at this time I would like to recommend that the Chairman entertain discussion and possible approval of these goals statements or some variation thereof.

Mr. Paul Alexander is available to summarize how these goals were established through our review process.

Chairman ABOUREZK. Well, my question, before we get into that, my question is this: Will action on these particular statements right now be redundant to what we are going to talk about through the report itself?

Why do these have to be taken up separately?

Mr. STEVENS. We just wanted some kind of a broad philosophy to go on. They are kind of an oversight. It is a statement related to all the principles that come bottomline from all of these chapters. That is what it generally says.

Chairman ABOUREZK. I wonder if it might not be better, however, to—either adopt or not adopt or act on these goals in conjunction with the background statements that will be included in the report that go along with whatever goal that they lead up to, and I have an idea some Commissioners and even including myself, might not just want to come out and make a general statement like this without knowing what is behind it. And, would it not be better——

Mr. STEVENS. You could do it at the end if you wanted to. It just doesn't matter.

Chairman ABOUREZK. If we are talking about—let me just give you an example:

No. 2, affirming the permanency of tribal government. Well, I don't think anybody disagrees with that, but why not act on that particular statement at the end of the tribal government chapter and just say, we are going to adopt this as a goal and it should go in the report.

The report is part of the overall statement on tribal government, including the background and why permanency is needed and so on.

Mr. STEVENS. Sure.

Chairman ABOUREZK. I am just saying, it seems to me as one person to be a lot better.

Is there any discussion on that question, on the procedure?

Congressman MEEDS. Mr. Chairman, I think probably it would be a very good thing to have the specialist explain in detail each one of the chapters and let us discuss and ask questions about those. Then, maybe later in the report, we can consider the kind of key questions which I recognize as being very important here. But I think, maybe we ought to all have a little better grounding in this report.

Now, it's probably my fault, but I have not seen this book until this morning. I got a chance to get through your task force summaries which, incidentally, I thought were very good. I would personally feel much more comfortable, before marching forth on some philosophical statements about these broad general principles, in understanding what you propose to do to implement those broad general principles. That would be my own preference.

Chairman ABOUREZK. Any other comments?

Mr. BORBRIDGE. Mr. Chairman, I would certainly like to concur with that as a suggested course of action, the comments made by the vice chairman.

Chairman ABOUREZK. Anybody else?

Mr. WHITECROW. Mr. Chairman, from the standpoint of doing a total job on this particular report, I would think that the important issues here would have to be established and the goals of our Commission should certainly be foremost in our mind, and I personally have reviewed this book and having spent most of the night in this review; and I find that these seven goals are in line with those task force reports. I also find them in line with reaffirming the Federal commitment to American Indians.

So, therefore, I as one Commissioner feel that to set the stage for our further deliberations, I think the seven goals would be appropriate for adoption in the initial phases, and then if it is necessary to come back later on, we can change those goals to come into whatever concurrence we have; but I do feel that these seven goals would be a realistic approach, giving us a wide scope insofar as what our responsibilities are as a Commission.

Chairman ABOUREZK. Thank you.

Any other discussion on that question?

Ada?

Ms. DEER. I would like to agree with Commissioner Whitecrow, that I also have reviewed these goals and feel that we do need to have some guidelines in proceeding with the staff work in preparing the report.

I do understand also the need for more time and more discussion, so I am not saying that I disagree with that either. But, I would like to express my personal opinion too, that I certainly agree with the goals, and I feel that they are important goals and that I think all of us need to have a thorough discussion on them so that we all know how we shall proceed.

Chairman ABOUREZK. All right. Let me, before we ask for further discussion, why doesn't somebody make a motion then and we will just get it up, and it seems to be a divided opinion on the Commission about how to proceed.

Mr. WHITECROW. Mr. Chairman, I move that this Commission adopt the seven goals in our preliminary discussion with the option being left forward that we can change these goals to come into the total direction of the Commission as we get into it.

Chairman ABOUREZK. Is there a second to that motion?

Mr. BRUCE. Seconded.

Chairman ABOUREZK. Made and seconded.

Now, is there any more discussion on this particular issue?

Congressman MEEDS. Mr. Chairman, I would like to speak in opposition to the motion at this time and I do that without regard to how I might feel later. I am just saying that I think we need an opportunity to discuss what these goals in some detail really mean.

For instance, reaffirmation of commitment to tribal sovereignty and the strengthening of tribal government. What is tribal sovereignty? Is it like pregnance, can you be a little sovereign or must you be all sovereign? There are a whole host of questions within the question of tribal sovereignty which I think this Commission needs to examine in detail.

I do not want to be placed in the position of voting against tribal sovereignty when I conceive it to be one thing and somebody might conceive it to be something else.

So, I think we need to understand the degrees of these general concepts that we are talking about. And, I would have to vote against and speak against the motion as it is presently presented, and I do that without prejudice to how I might feel about any specific aspect.

If, when we get to the end of the thing, tribal sovereignty, being for tribal sovereignty is what I conceive tribal sovereignty to be, then I would vote for it. But if it is not, I would vote against it and I think it is much too early to tell what posture we will be in at the end of that discussion.

Chairman ABOUREZK. I would disassociate myself from that question.

Adolph?

Mr. DIAL. Since there is some controversy here on it, I feel we should give it some more attention and perhaps we should table the subject until tomorrow or some other time.

Chairman ABOUREZK. There is a motion on the table.

Mr. DIAL. I make such a motion.

Chairman ABOUREZK. Is there a second?

[No response.]

Chairman ABOUREZK. The motion to table has been made. All those in favor of tabling will raise their right hand.

All those opposed to tabling will raise their right hand.

The vote is 5 to 3 in favor of tabling.

Ernie? Do you have any other bright ideas?

Mr. STEVENS. Yes, sir.

Now that you voted, what I was going to suggest before, see the staff work to make sure that everybody understands that to table is fine, possibly after you have discussed all the principles.

All we wanted was to discuss the goals and then you can do whatever you like and I agree, you know, that there should be a discussion and explanation of what that means; and the staff is prepared to do that and possibly they could do that later when you take it up. But our only intent was to try to explain how we arrived at that and what each one meant to us.

Chairman ABOUREZK. It appears that the feeling of the majority of the Commission here today is that they would rather have an explanation of these general goals before voting on them.

Senator METCALF. Mr. Chairman, I wanted you to know that I have voted for the motion to table.

Chairman ABOUREZK. I don't know if anybody knows that Senator Metcalf on principle always votes against tabling, motions to table for the reason that he believes that the issue ought to be brought up on its merits even if he disagrees with the final outcome.

He also—he almost, I should say, almost always votes against tabling.

Mr. BORBRIDGE. I would just like to comment that I feel very strongly that we need to discuss fully each of the points, both the goals and each of the chapters and the summary.

I feel that what we were discussing now is not a matter of how committed we feel to what is to be presented but merely a matter of procedure, and in voting as I have, I feel myself, quite frankly, quite committed to the content of what has been presented to us; but I feel just as a matter of procedure we have the time and time allows for us to review both the premises and conclusions or suggested conclusions and that at that time, we will be fully prepared to vote on the merits of each of these points.

This is why I have cast my vote as I have, Mr. Chairman, thank you.

Chairman ABOUREZK. OK.

Are you finished with your presentation now?

Mr. STEVENS. Yes, sir.

What you can do is that the agenda coincides with the book and the agenda coincides with the Commission outline, and the person's name to the right of the subject on the agenda is the person, if you wanted a preliminary presentation, or if you want to refer to them, they are the ones who are in charge of that particular thing.

Chairman ABOUREZK. What we will do, when we come to whoever is responsible, can answer the questions and who is going to do the rewrite based upon what the Commission recommends will sit in the hot seat.

Mr. STEVENS. Yes, sir.

Chairman ABOUREZK. All right.

Now, according to the agenda—have you just finished that item on the agenda which says "Final Report—Prolog, Ernie Stevens," or is that yet to come? I'm not sure just what you did to us.

Mr. STEVENS. I could go past the prolog, because as I was pointing out in the beginning, it is another one of those kinds of things, you know, but if at the end of the 4-day session you should decide that the prolog is in your book, and if you decide that that theme is suitable, it is the kind of thing that I think is not controversial and I don't think I need to discuss it right now.

Basically, it is saying that Indians for a number of different kinds of reasons should be made a permanent part of the political fabric of the United States, and as a separate political entity and that they should have the right to be separate and apart and different forever. And it is a prolog, like D'Arcy's thing to kind of set things, and also, other than where you want to make comments to varying degrees to that, without regard to that, in order for the reader and we have to be aware that the general public is going to be the reader, the Congress and the Senate are going to be the reader and other people have to understand whether they agree or not why Indians wish to be different and what is the legal and moral reasons for that wish.

And in order to understand the rest of the Commission report when it is finally printed, they have to understand that desire and that there is probably no need to pursue it any further because they couldn't fully understand why Indians want to be set apart from other people.

Chairman ABOUREZK. I think it would logically follow that the prolog should be adopted after the recommendation instead of before, but——

Mr. STEVENS. Yes, sir.

You see, all we are looking for is broad guidelines so we can start writing. Now that could be done at the end.

Chairman ABOUREZK. What about the introduction now?

Mr. STEVENS. The introduction, I would like Paul Alexander to explain what he is proposing that that be.

Chairman ABOUREZK. OK.

Mr. ALEXANDER. The page in the looseleaf on introduction simply explains what we would conceive of it being: which is basically a description of how this Commission came to be; what its operative legislation is; how it selected its task forces; what their responsibilities were; how Indian input and other input was collected throughout the report process; and after the report is finished, and there are general themes or particular points about what the limitations of the report may be, that they be spelled out right up front in the introductoni.

It is a factual, straight-ahead chapter.

Chairman ABOUREZK. All right.

Well, then it has not been written as yet, is that what you are saying?

Mr. ALEXANDER. No; it has not been written. The materials, of course, do exist but until the report itself is tied down on a substance basis, including the limitations of the report whatever they may be, it cannot be written.

Chairman ABOUREZK. Until they are reported in, so it is in the same condition as the prolog.

Mr. ALEXANDER. Yes; that is correct.

Chairman ABOUREZK. All right.

The next item then is "Basic Element," a subheading under that is "Chapter 1, Operative Concepts, Charlie Wilkinson."

Charlie, would you get a microphone?

Mr. WILKINSON. Thank you, Mr. Chairman. I would like to just make one brief comment to the Chair.

As you know, I came into this process late. I am serving on a special consultant basis and am not in Washington on a day-to-day basis, so I would like to echo your comments about the work of the staff.

I literally stand in awe of the kind of work they are doing right now. And I am just deeply convinced that the Commission is going to be in a kind of position where it can set the policy of whatever it is the staff is going to be able to crank out, a very able report. Having been in the office now for sometime, I am really satisfied with that.

The attempt on this first section will be to lay a foundation for Indian law and policy as it exists today. We are calling chapter 1 of this first section Operative Concepts.

The title I have given to my paper is "Distinctive Doctrines in Indian Law and Policy," it is now in late. I expect to have the final prepared within about 2 to 3 weeks.

The idea of chapter 1 will be to discuss in general terms, in layman's language, the basic doctrines in Indian law and policy.

The primary doctrines that will be discussed will be tribal sovereignty, the trust relationship, Congress plenary power, Indian treaties, and jurisdiction in Indian country.

There will be a short section at the end called something like "Synthesis: The Place of American Indian Tribes and Individuals in America's Legal System."

Chairman ABOUREZK. Charlie, except for that last part, would it be fair, would it be a fair characterization of your paper that it would be mostly existing factual and legal situations without making policy recommendations?

Mr. WILKINSON. Mr. Chairman, it would be exactly that. It would be a statement of the present state of Indian law, not an attempt to make policy. It would attempt to be a straightforward statement of what Indian law is now.

Chairman ABOUREZK. All right.

What was the last part now, the last section?

Mr. WILKINSON. It's sort of a conclusion. I have titled it "Synthesis: The Place of Indian Tribes and Individuals in America's Legal System." It is, I suppose, kind of an overview.

Chairman ABOUREZK. That would be more, then, of a subjective judgment for the Commission to either adopt or not adopt; is that right?

Mr. WILKINSON. No; I don't think we look at it that way, Mr. Chairman. It would be more of a short conclusion or summary, an overview of existing law. There is no attempt in this section to make any recommendations at all.

In other words, this entire section, of which this is one chapter, is an attempt to give a statement of the status quo. Mr. McNickle, for example, will do his history. There will also be a statement on demographics and existing administrative policies.

This is a statement to set forth some of the basic conceptual doctrines.

Chairman ABOUREZK. OK.

Congressman MEEDS. Mr. Chairman, what was the second to the last one that was mentioned?

I'm sorry Charlie, I didn't hear.

Mr. WILKINSON. I'll just repeat: Treaties and then jurisdiction in Indian country. That would treat criminal jurisdiction including the major Federal elements.

Chairman ABOUREZK. And it will be written in language that nonlawyers can understand.

Mr. WILKINSON. Absolutely. We think that is extremely important.

Congressman MEEDS. More importantly written in language that the lawyers can understand.

Mr. WILKINSON. I appreciate very much the vice chairman's comment, which I don't think was a question, but perhaps to answer it, it absolutely will be.

It absolutely will be. I believe deeply, and we all do, that it must be unimpeachable on a legal basis.

Chairman ABOUREZK. OK.

Then we will see that in 2 to 3 weeks.

Mr. WILKINSON. Yes; you will.

Chairman ABOUREZK. OK.

I think that will fall well within our timetable so far as being able to adopt—Ernie, where are you at?

When is the second draft markup session? When is it scheduled?

Mr. STEVENS. We had—our next meeting is on December 18th and then there was a possibility of January 18th.

Chairman ABOUREZK. OK.

Then that will be ready by the December 18th meeting?

Mr. WILKINSON. Yes.

Congressman MEEDS. Mr. Chairman, could I ask a question at this point?

Would it be proper now to discuss some of the things which have been stated here to be the content of this report or would it be better to wait until we have the report and then discuss it?

One has the feeling that perhaps we should have some idea of where the report is going. If it is nothing more than a presentation of fact as to what the state of the law is, the existing state of the law, both by statute and case law, then I assume we would pretty much just have to wait and look at it when it is finished.

But I don't want to be in any position now that we are accepting it. We are just at this point explaining the procedure which we are going to follow; is that correct?

Mr. Wilkinson. Yes.

Chairman Abourezk. I look on these early sections that we are talking about. I look at these sections as the staff giving us a general idea of what they intend to do, and for example, if one of us felt that he was way off base in writing on some issue, we could probably correct that right now.

But now, for example, for Charlie's and the introduction and prolog, I'm satisfied that that is probably what ought be to written and I assume, unless you say otherwise, you are all satisfied that that is the direction it ought to go in.

Then when we get the draft itself, where obviously we are going to have to look at the draft and see if indeed that is what we want.

I want to make one clarifying statement about Kirke Kickingbird, our counsel. Kirke got nervous because he—when I made the announcement that he had resigned, it sounded like he did so because of some controversy. That is not the case. Kirke was on leave of absence from his organization—is that what you call it, an organization?

Mr. Kickingbird. Yes.

Chairman Abourezk. Law firm or whatever.

Mr. Kickingbird. Right.

Chairman Abourezk. It was essential that he get back to it, because of a new project they are starting. I didn't want to see him go back, but I told him that I understood, because he has got to make a living and he, in fact, did have to go back to it and I asked him if he would undertake special assignments for us if the need arose and he has agreed to do that. But he's got to spend now the majority of his time back in his organization and that's why he resigned.

And, he went with the full appreciation of the Chairman and I'm sure the other members of the Commission.

Okay.

Any other questions on operative concepts, on Charlie Wilkinson's section?

If not chapter 2, History of U.S.-Indian Relations—D'Arcy McNickle is here. D'Arcy has written his concise history of American-Indian relations. Have the members had a chance to look that over? Would anybody like to comment on its form and the way D'Arcy presents it?

It is about what I had in mind. In fact, it is almost precisely what I had in mind. Ada?

Commissioner Deer. I would like to commend Mr. McNickle on this. It is a very concise, cogent discussion that I think should be given broad distribution and I would like to recommend that this be included in every high school and college textbook in the country and also, especially to some of the members of the press so they get their facts straight.

And, I feel that when we all have a chance to read it, that the other Members will share my enthusiasm.

Chairman Abourezk. Thank you.

Commissioner BRUCE. I would like to concur with that statement of Commissioner Deer, but also, Mr. Chairman, I wish you could give us just a quick overall summary kind of thing because you did that for us yesterday and I thought it was very helpful.

CHAIRMAN ABOUREZK. D'Arcy, do you feel like doing that today?

Mr. McNICKLE. I have some notes. I don't have a prepared statement.

Chairman ABOUREZK. Well, just go ahead.

Mr. McNICKLE. In other words, I tried to state some of the dimensions of the problem we are dealing with.

I can't imagine a better time for this kind of investigation to come to a head. In other words, because of a new administration coming in, and because it seems to me that Indian people themselves are at a point where they want something to happen and are going to push for something to happen, and at this point they have background and training which they didn't have 20 or 30 years ago which enables them to work within the power structure of the dominant society.

First of all, I would make the general comment that extermination was never accepted as a required official policy of the United States, although at various times extermination was recommended. This is particularly true after the Revolutionary War when there was a contest, particularly between the Iroquois Tribes and the newly forming nations about land title, occupation of land. There were those.

In what was then the Confederation, urging extermination be adopted as the quickest way to settle land issues. This was never accepted at official level nor ever after that, although again, there were times as during the removal of Indian tribes from the east to an area west of the Mississippi when extermination almost became a fact, although, again, it was not a declared policy.

In California, in the 1850's, again as a fact, extermination occurred. The Indians were shot down like rabbits by boisterous miners who wanted to get a hold of mineral lands. Again, it was not an official policy.

Now the effect of not having adopted extermination as an official policy is something that we recognize or speak of today as coexistence came into being. The French are even more tolerant of native peoples than the English colonies were, in actually intermarrying with the tribes they traded with and did not attempt to occupy land. They built forts along the trading posts and guarded the trading posts along the trade routes, but did not extend out into the countryside.

The Spanish were probably the least tolerant of the people of a different culture, different background, and did a pretty good job of wiping out tribes south of us. This U.S. policy changed with the competition for land. As settlement went westward, more and more tribes were found to be in the way of what was thought of as progress.

So, between the middle of the century and up until recent times, the various measures were adopted to make possible the acquisition of tribal lands. The most notorious case was, of course, the Allotment Act of 1887.

But after 350 to 400 years, what is now obvious is that the Indians have not changed, they have remained Indian, that they have changed but they have remained Indian; let's put it that way.

As a matter of fact, they started changing from the very first with the acquisition of the horse, steel tools, woven clothing. They accepted what was in their interest. What they could fit into their way of life but remained Indian. They became better hunters because they had better hunting equipment, for example, but remained Indians, with a hunting subsistence.

Now, this, you know, it is nothing peculiar about Indians. It's true about the Irish, English, French, over these 350, 400 years, these people have changed also and yet have' remained essentially Irish, French and English.

Now this is a simple fact that you expect to be universally understood, but strangely enough it isn't. Strangely enough, the United States, instead of extermination adopted this policy of bringing the Indian people into the dominant society through a process of assimilation as it became to be called.

And Indians have resisted that to the extent that this policy resulted in actions which were coercive, compulsive. Indian children being taken away from and out of their homes and sent hundreds or thousands of miles away to spend their growing up years as in an alien environment with the idea they would no longer be Indian. That is one aspect of what happened.

Chairman ABOUREZK. D'Arcy, weren't you involved in the 1934 Indian Reorganization Act?

Mr. McNICKLE. Right.

Chairman ABOUREZK. Have you included, and I haven't read your entire paper yet, but have you included in that what has happened at the IRA since 1934, what the Bureau of Indian Affairs has done with it; how they have handled it and so on. Is that in your paper?

Mr. McNICKLE. Yes.

Chairman ABOUREZK. Can you give us just a brief overview of what has happened to it in the hands of the Bureau since then?

Mr. McNICKLE. Well, first of all the meat, the guts of the original legislation as introduced was removed. It involved things like authorizing tribes to contract to carry on the services such as the BIA up until then was providing. That was cut out.

It set up a section directing the Commissioner to revise the educational programs so that the Indians could be trained in management, in how to operate the services which they were going to take over under contract.

Also to include histories of the tribes, their own background and their own religions with the Government and this was cut out.

There was a provision for setting up a special tribal court system and that was cut out; so what was left was a kind of recognizing the right of tribes to adopt written constitutions and again, that was hampered or harnessed, restricted by requiring a constitution be approved by the Secretary of Interior and moreover, any actions taken by the tribe affecting trust property or a trust relationship had to be approved by the Secretary of Interior. So the Indians really didn't have a good vehicle to work with.

To add to that problem, the Indians really didn't understand what was in it. There was a series of meetings held around the country to explain the IRA, but they were packaged kinds of meetings, you know, the agenda and everything was sent out and probably even the resolutions that they were supposed to adopt approving this. And the discussion was minimal. Usually 1 day or 2 day meetings.

There was no attempt really to translate this material into language which was representative at these meetings and oftentimes, the Indians, even though they spoke English, they were dealing with concepts which, you know, were not in their ordinary vocabulary, so that the understanding of the IRA was at best very faulty. And the Act was voted down by many tribes. Not only because they didn't understand it but there was some genuine opposition to what was being proposed.

Congressman MEEDS. Mr. Chairman, may I ask a question at this point, and I have not had an opportunity to read your work here, D'Arcy, but it sounds to me like a very good overview of both official declared and undeclared policy of Government in various forms with Indian relations.

I am just wondering if you could go through very briefly, as you have it seems to me, through these various policy periods, and state generally what the policy was, how it was implemented, and what result of that policy was?

Is that pretty much what your work does?

Mr. MCNICKLE. Yes; that's the review that I have written.

Congressman MEEDS. Could you give us that kind of an overview here if it is all right with the rest of the Commission? I would be very interested in listening.

I think you said assimilation.

Mr. MCNICKLE. There has been a problem going way back is what is meant by assimilation. It is a tricky word and quite oftentimes, it means, obliterating—wiping out what was there before, and making over people into a new cultural background. A new set of beliefs and customs.

Assimilation need not mean that. It should mean the right of a people to change over time, selecting what they want to adopt, rejecting what they cannot live with to the conflict of their beliefs, to their system of values; but if allowed to select and choose and adopt, people will change. People do change.

No society remains static. Now that is the normal process that people, unless they are under military pressure or some other kind of pressure to change wholesale, while ordinary change comes as people choose it. And that has been the difficulty all along, in trying to adopt legislation, adopt field practices that the Indian people can live with, can understand and accept and live with and function and grow.

And it has never been understood. Evidently, it is easier to make it wrong than it is to work with the people to the point where they understand what you are talking about; what you are trying to do, what the advantages are in changing their ways and allowing them to grow into that. That is difficult. We don't know how to do it very well and we haven't even attempted for most of the time—simply tried to force change on people.

Now that is the gist, I guess, of that review that I wrote. Anyhow, that gives you some idea of the dimensions as I see them of what is involved. It is, you know, so often said that the Indians don't change or they won't change.

In the 1950's, during the termination periods, Senator Watson would say, "The Indians won't change unless we require them to."

Well, that is not true. I was talking with an old Navajo medicine man some years ago who was non-English-speaking and in our terms not educated, but he said, "We're learning all the time."

And he meant it in several ways. First of all, the Navajo medicine men used to spend a lifetime learning how to do it. There are hundreds and hundreds of chants and songs that you have to learn and they have to be perfect. But even also in terms of learning to live with the people around, the non-Navajo people around him. "We are learning all the time," he said.

This is a good statement of Indian attitude. They learned quickly when—you know, when the horse came, they learned how to be good horsemen and how to take care of horses and this is to their advantage. It's much easier to ride a horse out on the hunt than to go on foot so that makes sense. But this is—you know, that wasn't a special case. It's been true all down the years that Indians have changed.

Now the reason I said, at the beginning, that, you know, the best possible time for this kind of a study that has been made is because Indians are—it seems to me—are ready for something like this to happen. They were not ready in the 1930's when, the Indian Reorganization Act was adopted.

That was just some 40 some years after Wounded Knee and a lot of Indians remembered what happened in the latter part of the 19th century and they simply withdrew and went home and tried not to have anything to do with the white world.

But, this now is completely changed. There are over 13,000 Indians at the college level of training right now. They are becoming lawyers, becoming doctors, becoming engineers, social scientists; they are accepting the challenge of the modern role, but again, still, they are saying, "We are not going to become brown-white men. We are going to still be Indians, but we will use these tools and these skills that have been developed; will use them for Indian purposes."

Again, some years back, when I had a workshop for Indian and college students at the University of Colorado, and the Indians then were saying, "We want education for Indian purposes," and they were going back to school and making good, which was when I was growing up, there were probably not a dozen Indians beyond high school anywhere in the country.

This picture has completely changed. Thus, it's going to be difficult from now on to be coerceive in dealing with Indians. They are going to be able to talk back, to take actions which will be in their interests.

I think that sort of summarizes.

Chairman Abourezk. Jake, you had something to say?

Mr. Whitecrow. Mr. Chairman, one of the things that I have noticed in your presentation here, D'Arcy, is the fact that the comment you just made, that Indians want to remain Indians, and the relationships that I've had out in the field indicate the same thing.

Being raised as an Indian, knowing the old ways, and having to become educated, hopefully to compete out on Main Street with any other individual out here as a critizen of the United States.

Your comments, particularly on page 15 of your recitation here, whereby you state the official ideology of the Federal-Indian policy, reflected humanitarian aims almost universally those in charge of the Indian affairs assumed that Anglo-American civilization represented a higher level of culture and moral development and a more viable economic system than tribal cultures might encompass.

When I read that, it reminded me of a story that I have been telling for several years now in regard that Indian people had a culture. They had relationships with what is called, my good friend upstairs, way upstairs and hopefully I'll be resting with him some day in the future. But, I hope it's not real soon.

The Indian did have special relationships with our Creator. They knew how to treat one another. They treated one another with dignity. Sure, we had conflicts between tribes and I think this is really the only thing that American Indians are asking, and hopefully, with the product of this Commission, we will be able to allow Indians to be Indians and simultaneously have their own government, have their own relationships within their own geographic areas as established by treaty; and also, to allow those Indian tribes to have jurisdictional processes over their geographic area.

With this particular thought in mind, I would like to call to the Commissioners' attention a story that I tell occasionally when I am making a presentation, and it fits just exactly what you have said here, Mr. McNickle.

That when the white man first came to this continent, he looked around and he said, "Hum, there are people here. There are males and there are females and I just think we'll call them Indian."

Well, what do they do. The female, she does all the work. She chews the buckskin, she makes the moccasin, she tends the soil. She tills it, she harvests the crops and preserves the food, prepares the table. She takes care of the cleanliness and the sanitation around the home. She also makes sure that all of her work is totally done. She looks after all of the desires and the whims of the male.

She also, if it's necessary to move, she manages this particular move. Now, he said, "What does the Indian do?" And, he looks around and he says, "Well, they hunt, they fish, they make a little love."

Now, the white man thought he could improve on that system of life and as a result, all of us Indian men now have to work. Is that a good system or not? Personally I agree with everyone. I think we need to go back to old ways. I would like to hunt, fish, and make love. I think it would be a tremendous life. However, many Indian women would like to run me off when I say that.

So, from that standpoint, I think this pretty well sets the stage.

If we could provide this kind of return to 155 years ago, whereby the Indian people did have the ability, they had the relationships, and they had a culture that was beautiful. They had the relationships that were beautiful also and I don't think the United States of America could go wrong by patterning itself after those relationships that we had as American Indians.

And, as an officer in the U.S. Army Reserve, I too, am a strong supporter of this country and I would like to see, once and for all, the results of this Commission bringing about a return to all of those tribal relationships and allowing Indian citizens to be Indian, and allowing a smooth and coordinated development between governments, regardless of what level those governments may be.

And, I think it can be done. I think that the Indian people have the ability. They have the ingenuity and certainly they have the concepts of what they want. For many, many years now, we have sat and we have listened to the way things should be done. We have not really made a strong effort to change those things and with this Commission, fellow Commissioners, we have this opportunity of changing things, and I think we should point toward making the wrongs right once and for all setting the stage for future development so that our Indian people can be Indians. Our Irishmen can be Irish, our Germans can be German, our Japanese can be Japanese, but still all in all, we are citizens of the United States. I think it can be worked out.

I see no problem in that and Mr. McNickle, I think you have a wonderful, wonderful presentation. I would also like to remind the Commission that just yesterday evening I had the opportunity of purchasing Mr. McNickle's latest book, "They Came Here First." And he's paying me a quarter for every time I say his name.

We have already made that arrangement. So, I would like to recommend this book to the Commission. I think it would be a fine addition to every Commissioner's library.

Chairman ABOUREZK. Thank you.

Louie?

Mr. BRUCE. Mr. Chairman, I'm fascinated with this article and I do agree it ought to be reprinted and sent out everywhere for two reasons. One is that I was around when the IRA was in existence and started. I attended some of those well-planned meetings by the Bureau and its staff.

Some of them moved and went, some of them voted in favor, sometimes against their wishes; but in D'Arcy's article, he says Indian opposition to assimilation policies never disappeared, but everytime the Indians found an answer to policies, the Bureau found a way around it. And, I am not going to focus on that.

But, as we look at the history of the Bureau and its activities and somebody could interpret that I am anti-Bureau, which I am not completely. However, there are a lot of fine people in the Bureau and I like them very much—but over the lifetime since the Bureau has been in existence, it has gone too far beyond the matter of protection and we find ourselves involved in a situation where Bureau officials, not the Commissioner, were making some individual decisions for individual people and Indians, including myself as an Indian.

And that's why I feel that we have to take a stand and move, and that's why I'm interested in the Policy Review's recommendation for a separate and independent agency and I want to hit hard on that as we go down the road, because I feel it's necessary.

I think I have said more than once that no Commissioner, Indian or non-Indian, can ever be affected if he really and truly wants to do something for his people, because always, there is somebody else above him who signs that paper off or buries it in some file or something. And, unless the Commissioner, our man for us can be where he can be effective, we are not going to make any progress.

D'Arcy says in his article that we've sort of moved away from the feeling of defeat to something where, you know, we see blue sky, and so forth. And I think in your article you did mention that Indians, "Have become more aware of their common problems and common peril and they are learning how power is used in contemporary society."

And as far as the Bureau is concerned, whether it be separate, I'm afraid in some respects that if it is set off alone, somebody could wipe it out overnight with the stroke of a pen.

However, some change has to come. Some change has to come if we are talking about self-determination and Indians having a right to decide what happens to them on the reservation or elsewhere; and so I tie this in with a compliment to you, D'Arcy, who I've known for 100 years, and the kind of support I expect you give in changing the Bureau of Indian Affairs. And I guess many of you know how sincere I am in that respect.

Thank you, Mr. Chairman.

Chairman ABOUREZK. Thank you, Louie.

D'Arcy, do you have any more you want to say on this?

Mr. McNICKLE. No, sir; I said enough.

Chairman ABOUREZK. We appreciate it very much. I think it's an excellent piece and we are very grateful.

Mr. McNICKLE. Thank you, Mr. Chairman.

Chairman ABOUREZK. The next chapter—we are going to, incidentally, we will adjourn at noon and come back at 1:30, so I think we might be able to get through that next piece. Paul Alexander, on chapter 3.

Mr. ALEXANDER. Chapter 3 is currently called Contemporary Conditions of Indian Affairs.

Chairman ABOUREZK. Is that listed as demographics?

Mr. ALEXANDER. Yes, it is.

This piece is being done for us by the Library of Congress. It basically has two parts. The first part is a compilation of the existing statistics on social, economic, education, and similar items, as they pertain to Indian people today.

The second part of this chapter would be a critique of the existing data systems and what their lacks are in providing the kind of data that is necessary to make decisions by Indian peoples themselves, and by the various agencies that have responsibilities in Indian affairs.

We expect to have a draft from the Library of Congress, who we are in contact with, in December, hopefully before the December Commission meeting.

Chairman ABOUREZK. When you say, "hopefully," I think it's pretty essential we have it before the December Commission meeting in time to either adopt it or make changes in it if we think it necessary.

Mr. ALEXANDER. Yes.

Chairman ABOUREZK. Will we know from reading this particular chapter where the Indians are, what their tribes are, what their land base is, through maps and other things?

Mr. ALEXANDER. We will have some of that information. There are data problems and particularly with respect to land base. We know from our own experience that some of this has to be added by the staff to what the Library of Congress is producing. There are competing figures from official sources and where that exists, it will be pointed out.

Yes; an attempt will be made to do that.

Chairman ABOUREZK. OK.

Anybody have any other questions on this chapter?

Commissioner WHITECROW. Will that include all your demographics, Paul?

Mr. ALEXANDER. It will be an overview of demographics. It is our conception, and I guess we can say it now, and you can change it or what have you, that in the support section on individual chapters where there are specifics, for example, in the education chapter or a chapter dealing with child placement, where there are individual specific statistics and factual support material, those types of materials would be integrated throughout the entire report and not just simply found in the first section.

Mr. WHITECROW. I know I've had a great deal of problems, and I'm sure every other Indian in the country has had problems in trying to put together programs and projects, because of a lack of statistics and demographics.

Mr. ALEXANDER. Yes. The significant problem, we seek in the second part of this chapter to highlight that problem and perhaps to come up with some recommended action to solve some of the data problems.

Mr. WHITECROW. OK. Fine. Thank you.

Chairman ABOUREZK. Any other questions?

Ada?

Ms. DEER. In your critique, Paul, will you be specifically addressing the impacts on the Indian communities, that lack of adquate data has presented?

Mr. ALEXANDER. I think that is appropriate in the second section. There are a number of impacts that we are familiar with and what we intend to do is to get the draft from the Library of Congress and have substantial staff input into it, and present both to you for your adoption, critique or what-have-you.

Chairman ABOUREZK. Other questions?

If not, Paul, thank you very much.

Ray Goetting, chapter 4, Federal Administration.

Mr. GOETTING. Thank you, Mr. Chairman.

This chapter, like the others in the first section of our final report, will be subject to review in terms of the policies or the procedures and the applications that are developed as we go on through the book. I would like to say specifically that the basis legally that has been set and described to you in the first sections of these chapters that have just been described will all terminate in the manner in which those are fulfilled in an administration of the Federal Government to carry out the obligations, to satisfy the needs, to develop the delivery of services that Indian people have decided or have recommended to this Commission to be considered.

This Commission has the obligation, of course, to determine how those services will be provided and under what conditions and how the Federal Government will be organized in a manner to do that.

Chairman ABOUREZK. This chapter you are preparing, when will it be done first of all?

Mr. GOETTING. Only when we're through, only when the Commission itself decides how much judgment they will put on the organizational structure.

We will discuss that as we go through the elements. This is the problem that I feel——

Chairman ABOUREZK. You'll have to back up a minute.

There are some things I don't know about. What is the purpose of this chapter?

Mr. GOETTING. To set the base for the decisions that will be made by the Commission. Somewhat the policies that have been established. It will show the history of structure over a period of time, and then to permit the development of the recommendations of the Commission as to how they would like to see the structure in the future.

Chairman ABOUREZK. Well then, the other chapters, findings and recommendations, isn't that redundant?

Mr. GOETTING. Yes—well, it would lay the foundation in terms of presenting the report to the Congress as to what the basis perhaps would exist in the future, in the report.

The details are in the report but this would be somewhat of a summary in regard to it.

Chairman ABOUREZK. I am under the impression that the section on findings and recommendations will set out recommendations in a section. Why do we need another one up here in the introductory part?

Mr. GOETTING. Well, there are some basic elements that would be explanatory and the summarization of the information that follows in the report in much more detail. I think it would be somewhat more of a summary than just to set the tone that the remainder, therefore, describes in detail.

Certainly, the chapter would discuss the alternatives that have been considered, the manner that they have approached the development of whatever the structure is designed to do it.

Congressman MEEDS. Mr. Chairman, will this then be a set of recommendations to the alternatives to the administration of Federal-Indian relationships among which the Commission would select the direction it wishes to recommend to the Congress or to the administration?

Mr. GOETTING. I think it would describe the process by which he would have laid the basis for making that decision and recommendation to Congress. Yes.

Mr. WHITECROW. Ray, would the Bureau structure reorganization be included in this or would that be included in the chapter down here on——

Mr. GOETTING. I think the basic overall description might be in this chapter, but the details of an organizational structure would be in the details of the outline that follows; yes.

Mr. WHITECROW. Say again? I lost you there somewhere.

Mr. GOETTING. I think a general explanation of Federal administration to set the tone by which the decisions were made and the detailed descriptions that follow in the matter of delivering services, in the matter of deciding the organizational structure and so forth would be in the details of how it would be carried out.

The outline, as you go through, would discuss several things, but this would kind of tie it together, to set the tone for what the Commission considered important in making their decisions about it.

Chairman ABOUREZK. Ray, I guess one thing that disturbs me is, you've got it entitled Federal administration, and that deals with only one chapter down below in section 2. Now, if you want to, I think it's a good idea to have recommendations right at the beginning of the report, because for those people who don't want to read through the whole report and want to get to it very quickly and just find out what is it we're doing, what are we up to, that's fine.

But to pick out only one part and make an initial recommendation doesn't make much sense to me. It makes more sense to take chapter 4 and summarize the recommendations of all the other chapters, 5 through 15.

Mr. GOETTING. It could, yes.

Chairman ABOUREZK. What do the other Commission members think about that?

Mr. GOETTING. That's where the details of how it's done is in the next number of chapters.

Chairman ABOUREZK. That's what I'm saying. I'm disturbed I guess because you only pick out one section, Federal administration, to summarize rather than summarizing all of them.

Mr. GOETTING. Well, I think Federal administration, in a broad sense, covers how the whole relationship will be performed. I don't think it's limited to specifically an organizational structure. I think it's how it carries out the whole works, so this would sort of lay the foundation.

Chairman ABOUREZK. What's wrong with changing the title of that chapter and it's contents by saying Conclusions: Summary of Conclusions and Recommendations, and then giving us like a one sentence shot on the other 10 chapters?

Let me hear some more comment from the Commission members on that, on this whole question.

Congressman MEEDS. Mr. Chairman, as I understand it, this will simply be a presentation. This is not a final report. It is simply a presentation to the Commission of alternatives from which the Commission will select one or more for the delivery system, or administrative system for administrating the Federal-Indian relationship.

And, if I am correct, then I'm in agreement with doing it and doing it in this place. But the depth of that relationship would be described in a later chapter in greater detail.

Chairman ABOUREZK. Lloyd, I think you are correct only in part. The Federal-Indian relationship deals with chapters 5 through 15, really, and what recommendations we're going to make.

Congressman MEEDS. But how do you administer that relationship, that is the question we are asking here; and I understand this will be a presentation of a number of different ways to administer that relationship.

Chairman ABOUREZK. But that is in chapter 7. I mean, that is what bothers me, is you already have that down below in chapter 7.

It is not logical to me to do it this way, to pick out chapter 7 and summarize up in the introduction and leave the other chapters alone.

Mr. GOETTING. Well I think, really, that the Federal administration and the total picture is not just confined to chapter 7.

Chapter 7, specifically, is for the delivery system and how the mechanism is there. But Federal administration would be a summary of the entire Federal structure, how it has been in the past, what sort of alternatives there are, how the solutions might have been arrived at, or the problems developed in the following sections.

I think it would take care of all of it, all right, but if in the same picture and it applied to the mechanisms, would be the same as the legal or anything else. Now, if you would care to, for a moment—I might ask Paul to describe how it fits in a similar fashion and some of the other paragraphs in this process were developed.

Mr. ALEXANDER. This entire section, of which this chapter is the last one of three, is essentially conceived of as laying out the basic understanding in the major areas that are necessary to deal with the rest of the report. That is the special legal concepts that exist in Indian law that are not necessarily understood or common to the rest of the legal system in this country.

The historical status of Indian tribes and people in their relationship with the United States and others.

The demographic situations concerning Indians currently, and I will get right to this chapter.

What our feeling was initially, and it may have shifted somewhat, was that the notion of how the Federal Government has operated, what are the different systems that it has used and what are the options or the ideas that people currently have is a crucial element in understanding all the rest.

I did not necessarily see this chapter, although others may see the chapter, as a place to summarize recommendations; but to provide the overview of what Federal administration has been and how crucial it is to understand that factor in dealing with any issue in the remaining 10 chapters.

Chairman Abourezk, on your point about the summary and its location—this location is not definitive. Chapter 15, which is the last chapter in the report conceives of such a summary as you have identified. Perhaps it would be more appropriate if this were in the beginning of the report, but it is the—at least the staff recommendation that there be a summary chapter that lays out the major recommendation and theme for each of the areas.

Chairman ABOUREZK. We are talking about two different things. Let me just dispose of that summary thing first. I personally would be in favor of putting a summary of the conclusions and recommendations right at the beginning and I don't know what the rest of you think, but it makes more sense to me to do it that way.

Let me just ask, does everybody feel that way pretty much? Should we just ask the staff to do it that way then?

All right.

Second, on Federal administration, I am just now getting a sort of a hint at what you are going to write in that chapter but I am not really sure yet; and it may be clear to the rest of the members of the Commission, it is not yet to me.

Do I understand you to say that you are going to write a chapter on the importance of Federal administration of all the Indian policies, how it has been handled and how it ought to be handled, and the attitudes of the bureaucracy and things like that?

Mr. ALEXANDER. And the different approaches that have been historically taken. What I guess the issue comes down to is what is the last part of that chapter; does it lay out conceptually what different approaches are, or whether it at that point lays out the approach that the Commission in fact adopts for its recommendation on the Federal administration.

And, it could do either and we in a sense need your guidance on that.

Chairman ABOUREZK. OK.

Adolph, you wanted to make a recommendation?

Mr. DIAL. I hate to oppose at this phase. You know, they spent so much time on it, and there are several legal minds and so forth, but if they want it, I would say let them have it; but I would also go along with you for the summary and conclusion in the beginning. In this way, I think it would be read.

Mr. GOETTING. I think, Mr. Chairman, there is a great concern among all of the task forces and all of the input from the Indian tribes and so forth as a specific type of structure that might be recommended by this Commission by which the Federal Government actually administers all of the rules and regulations and processes it goes through.

Chairman ABOUREZK. That will be in the chapter?

Mr. GOETTING. I think an explanation of how we arrive at that recommendation we make to Congress as to the structure.

One of the elements in section 2 of the law says that we look into Federal Administration and structure of Indian affairs. And that structure portion, I think, needs to be covered somewhere in summary as to how the Commission evaluated the material it has and how it decided what to do about mechanisms that provide the obligation of the Federal Government toward Indian people and I think it is a very important element, a very important subject, to get that out in the open as well as the legal basis for determining the Government's obligation as well.

Once the obligation is determined, another question is how is that obligation to be fulfilled and what mechanisms do you use and how do you arrive at those conclusions.

I think a summary of that is——

Chairman ABOUREZK. Well, we will have a chance to look at it. It was just not clear to me in the beginning what you really wanted to do.

Any other questions, comments?

If not, the bewitching hour has arrived and we will now adjourn until 1:30——

Mr. WHITECROW. Mr. Chairman, before we adjourn, may I bring to the Commission's attention a letter that we received from the National Congress of American Indians requesting an extension of time on the submission of our report to the Congress, giving the Indian people out in the boondocks, so to speak, an opportunity to address these various issues, and I would like to ask during our lunch period if we cound invite Mr. Mel Tonasket to have lunch with us to explain the reasons why this request was made.

It is my understanding that our task force reports have not even been printed as yet and have not gone to the field. So, I think we are into a situation here whereby the Indian people need to have a little more time in which to review the findings of the task forces and review our potential report.

Chairman ABOUREZK. Without objection, Mel Tonasket is invited to lunch.

Mr. WHITECROW. Dutch.

Chairman ABOUREZK. We are in recess until 1:30 then.

Thank you, Jake.

[Whereupon the meeting was adjourned at 12:15 p.m. to reconvene at 1:30 p.m.]

AFTERNOON SESSION

Chairman ABOUREZK. The Commission will resume its meeting.

Gil, are you ready?

Mr. HALL. Yes, sir.

Chairman ABOUREZK. We will get into, now, Section 2—Findings and Recommendations, beginning with Chapter 5: Federal-Indian Trust Relations. Gil Hall.

Gil, go to it.

Mr. HALL. OK.

Let me say as an introductory comment——

Chairman ABOUREZK. Get that microphone a little closer. It's hard to hear you.

Mr. HALL. All right.

As an introductory comment, let me say that whereas I was the lead staff person with respect to summarizing and drafting the materials on the trust responsibility, it is an area which everybody participated in at one time or another as being a very complex and difficult subject.

So, Charlie Wilkinson and others may very well have some comments also.

The first 17 pages of chapter 5 are intended to be very brief, concise characterizations of task force findings and recommendations in the area of trust responsibility. You will find at the end of each finding, or at the end of each recommendation, a number identifying which of what task force and in some cases, exactly what page and what section of that task force report, dealt with that subject matter.

At the end of the chapter, starting with page 18, is a staff summarization of what is in the task force reports, as well as any of the opinion expressed in hearing and other sources.

The concept of trust responsibility is one which virtually all of the task forces had to come up against at one time or another in the course of their studies. For that reason, the staff felt that a summarization at the end of the chapter might be useful for purposes of this meeting in considering the concept. You'll see, starting on page 20, principles of the trust responsibility which the staff recommended the Commission adopt as a framework in drafting that chapter of the report.

These principles are consistent with all the task force reports, Indian testimony, and a great deal of information that has been set forth and written about in that subject area. Despite the fact that the trust responsibility is a confusing concept on which there is great misunderstanding, this is not a definition of the trust responsibility.

The staff did not attempt to propose a specific detailed definition, nor did any of the task forces.

Chairman Abourezk. Why not?

Mr. Hall. It was our determination, and I think I speak for everyone on this, that to do so would be not only extremely difficult but perhaps unwise for this reason: The trust responsibility as it is interpreted by the courts and as analyzed in a variety of sources, and as administered by the Federal agencies is a dynamic legal concept which is evolving constantly, much like the principles in the United States Bill of Rights. Thus, for the same reason that we would not propose a specific definition of any of the principles in the Bill of Rights, we would not propose a definition of trust responsibility. In doing so, you might very well inadvertently infringe upon clearly established legal rights that are already there.

As an alternative to that——

Chairman Abourezk. It is more a question of you are afraid you might leave something out if you try to define it.

Mr. Hall. That's correct.

As an alternative to that, we are recommending six broad principles, which we feel characterize the trust responsibility as specifically as is wise in this context, to whom it is owed, and who has the duty of carrying it out. It is planned that if the Commission gives us an OK on these principles, the staff will then draft that chapter of the report consistent with these principles.

Chairman Abourezk. Gil, one question comes to mind that I am going to have to ask for each one of these chapters.

You have the recommendations drafted in such a way that it is capable of being put into legislative language; I mean, in other words, it is legislation requirement, or is this just a general principle that ought to be adopted by the administration, by the Bureau of Indian Affairs?

Mr. Hall. Well, I would see this as eventually constituting a policy statement from Congress to give guidance in the administration of the trust responsibility.

Now there are certainly elements of this which could be instituted immediately by the executive branch, if so disposed. No legislation would be necessary. I think, however, the preferable view would be for Congress to give policy guidance to the agencies who, if you review congressional testimony in the area of trust responsibility, as well as a lot of testimony from Indians, demonstrate confusion as to what the trust duty is and how we carry it out.

What this is intended to do is to give that guidance to the Federal agencies.

Chairman Abourezk. Are you recommending the establishment of a trust council authority in this section?

Mr. Hall. Well, we have not specifically dealt with that question there.

Chairman Abourezk. Is it dealt with anywhere?

Mr. Hall. One or two of the task force reports discuss the trust council concept as a possible solution to the conflict of interest problem.

Chairman Abourezk. Is it anywhere in the final draft of the report?

Mr. Hall. In the final draft of the task force report or Commission report?

Chairman Abourezk. No; the Commission report.

Mr. Hall. Yes; that is dealt with in the Federal administration section which is chapter 7.

Chairman Abourezk. OK.

Senator Metcalf. I am concerned that the growth of Federal trust responsibility has gone away from many of the patterns of our traditional, legal trust relationships in civil trust.

You pointed out that there may be some conflict of interest. Of course there are conflicts of interest with the Bureau of Indian Affairs which exercises a special trust responsibility, and at the same time exercises an administrative responsibility.

I think that any report we make should indicate a deviation from traditional trust law and the law where the trustee exercises his authority over trust property, as a bank or an insurance company or a lawyer; somebody in a probate proceeding. And, the report should indicate this special responsibility that we exercise in the course of legislation, and legislative acts to our Indian trust.

So, I would hope that we would point out the deviations that we have from traditional trust law and point out also the obvious conflicts of interest that are here when we have the administrator of Indian law exercising the same trust responsibilities that in the case of a trustee would be actionable before a court.

I think this is a very delicate and important area of discussion. I haven't been able to read some of the material but as I hear you outline it, I just feel that probably—and I know that both Lloyd and the chairman will agree with me—that these are areas we are discussing and arguing about on the floor of Congress from time to time.

Mr. Hall. I would agree wholeheartedly with you, Senator. You are absolutely correct that it is not consistent with all common law principles of trust as we know it in the law.

There are certain elements that are common but it is a unique relationship and that relationship should be set forth very clearly and I would expect that this chapter would.

Chairman Abourezk. Is this the chapter we have in this notebook, is this what the draft looks like; in other words, if it is not changed, this is what will appear in the final Commission report?

Mr. Hall. No.

Chairman Abourezk. What will?

Mr. Hall. This is intended as a very, very brief suggestion of what is going to be in there, but the chapter itself has not been drafted and shall not be drafted at least the way we are operating now, until we have guidance from the Commission with respect to the principles under which that would be drafted.

And, it would deal with basically the five subject areas that are in here: The nature of the trust, the trust property, to what it runs, the beneficiary of the trust, and the various roles of the executive agencies, the judiciary, and Congress.

Chairman Abourezk. All right, sir.

You are asking the Commission now—you set down on paper a series of concepts. You are asking the Commission now to either approve or disapprove these concepts, and after that time you will undertake to write the first draft then?

Mr. HALL. That is correct, and of course, that is when the Commission would take a look at that first draft.

Chairman ABOUREZK. OK.

Let me ask you about the length of your first draft, and this will be true with all of these. I want to admonish that you can't make this thing too lengthy—neither can you leave out anything that is important.

Congressman MEEDS. What if those are mutually exclusive?

Chairman ABOUREZK. I would suggest those of you that are doing the drafting get a book on word economy and I am not saying that you haven't done so here, Gil, I'm just saying that writing skill is going to be very, very important when you finally do that because you can put people to sleep. Yet, you want to make certain everything is in it.

Mr. HALL. That's true. As a matter of fact I've gotten the comment personally with respect to this chapter asking how I could sum up several thousand pages of task force reports in several pages and I said, "Because I did," and I use as few words as possible.

Chairman ABOUREZK. You have to.

Mr. HALL. Right.

Chairman ABOUREZK. Unless there are many more comments at the outset, do you want to start in——

One other thing, and I think the same thing ought to be true with each chapter, and I would like the Commission to comment on this if they want to, the same thing ought to be true with each chapter as it is with the entire report. The recommendations ought to come first and then follow that with your findings of fact and so on.

Mr. HALL. OK.

Chairman ABOUREZK. That should be done, Ernie Stevens, with every chapter, unless the Commissioners think it ought be done otherwise.

Jake?

Mr. WHITECROW. Taking a look at the vast responsibilities that we have with these reports, we do have those reports that have been submitted by the various task forces along with their findings. I, know that each and every one of us have gone through these task force reports, but I think it would be most appropriate from a standpoint of this Commission to go through these reports, recommendation by recommendation and discuss those recommendations.

Chairman ABOUREZK. That is what I intended to do.

Mr. WHITECROW. OK.

Chairman ABOUREZK. Any other comment on the location, on the recommendations themselves?

If not—go ahead, Lloyd.

Congressman MEEDS. Mr. Chairman, that may well be a good suggestion toward the final report, but I see the format here is background or findings and then recommendations. Could we follow that procedure today at least in our discussion?

Chairman ABOUREZK. Yes; it doesn't hurt in the discussion; it doesn't matter. I'm just saying when you do the final draft.

Congressman MEEDS. In terms of a final report and who is going to read a final report and what part of it they are going to read, I think the recommendations should be first, too. That is supported by the findings and background.

But, I see that it is not in that form today and it might be easier to follow for us.

Chairman ABOUREZK. I think that's true.

Congressman MEEDS. At least those of us, hopefully only one, who has not had an opportunity to read this.

Chairman ABOUREZK. OK.

Do you want to start at the beginning then, Gil?

Mr. HALL. Now again, on page 2, you find the first statement of findings and the recommendations from the task forces. That's what it is, it is from the task forces.

Now, this is not synthesized by my own ideas. It's a summarization. It is intended to be summarization——

Chairman ABOUREZK. Can I stop you a minute? Does anybody else feel like it's warm in here or is it just me? Has anybody gone to see the thermostat man?

OK.

Mr. HALL. In order to save time, if it is agreeable with the Commission, I'll just start with page 2 and in a sentence or two, characterize the findings on that page, and unless there are questions, I'll just go through it that way.

Chairman ABOUREZK. That's a good way to do it.

Mr. HALL. OK.

The essence of that general finding is that the origin of the Federal trust responsibility rests in international law and in treaties, statutory law, and Federal judicial decisions.

It is a concept that predates the formation of the United States in that it appears in colonial agreements between Indians, and England, Spain, France, and the Dutch.

Despite this long history, though, of the Federal-Indian trust relationship there is still disagreement as to precisely what it means.

I think it is a fair characterization of the task force findings that the Federal trust responsibility and Indian self-determination are not necessarily contradictory policies at all. You can have self-determination and still have a permanent trust responsibility toward the Indians. That can come about because the trust responsibility does not mean control of Indian resources and Indian lives, it means protection. It means an assurance of their survival.

Congressman MEEDS. Could I, in the findings, just get some more of this historic background and rationale for No. 2.

"Their lands and property shall never be taken from them without their consent." What is the background and basis for that?

Mr. HALL. That is a direct quote, I believe.

Congressman MEEDS. From the Northwest Ordinance?

Mr. HALL. From the Northwest Ordinance. That's correct, and that is placed in there because four of the task force reports felt that the Northwest Ordinance was an excellent starting point for some appreciation of what trust responsibility is.

Congressman MEEDS. Do you feel the Northwest Ordinance is binding on the 13 Original Colonies and now on the 50 States?

Mr. HALL. I do, yes.

Congressman MEEDS. As a moral or as a legal obligation?

Mr. HALL. I think as——

Congressman MEEDS. Or both?

Mr. HALL. I think as both moral and legal, with the caviat, of course, of congressional plenary power. There may very well be some modification in exactly how the responsibility is carried out but I don't think that necessarily changes the legal responsibility.

Congressman MEEDS. No, I assume you would feel that means that Indian lands cannot be taken by condemnation by the Federal Government?

Mr. HALL. No, I don't think it necessarily means that. I think there is room for condemnation—we are not talking so much about whether it can or cannot be done but rather the process by which it is done.

It should be done with complete participation in a process on the part of the Indian tribes, plus the possibility of allowing for an exchange of lands rather than merely offering money for condemned land, thereby not diminishing the Indian land base. This is important because since 1934 approximately 1½ million acres of Indian lands have been lost through Government condemnation.

Congressman MEEDS. Well laying aside for the moment the authority of the State to condemn, and I think you and I would both agree that Congress does have plenary authority over Indians, the Congress can in effect condemn Indian lands by simply passing a statute. You get the question of taking the fifth amendment and other things, but I think you would agree with that statement.

All right. Unless I am mistaken, the Congress and for instance, the Bureau of Land Management or the Department of Defense can condemn without specific congressional authority, State lands for the common defense of the Nation for instance.

Would you agree with that?

Mr. HALL. Yes.

Congressman MEEDS. Why then should Indian land be any different than State land as opposed at least to condemnation by the Federal Government of State land?

Mr. HALL: Because there is no trust relationship between the Federal Government and the States. Their relationship is set forth in the Constitution which does not speak to any sort of unique relationship between the States and Federal Government. Historically, there is such a relationship between Indian tribes and the Federal Government and that requires that Indian lands be treated differently from other lands.

Congressman MEEDS. Do you believe the Federal Government should not, because of that trust repsonsibility, allow them to condemn Indian lands, trust lands?

Mr. HALL. The Federal Government or the States?

Congressman MEEDS. The Federal Government.

Mr. HALL. Whether the Federal Government can condemn Indian lands?

Congressman MEEDS. Yes.

Mr. HALL. I think it can do so, yes.

Chairman ABOUREZK. I think he is asking: Should it be able to do so?

Congressman MEEDS. I think there is some question about it myself, and I think that is one of the things we ought to resolve in this Commission.

Mr. HALL. Do you want to respond to that?

Mr. TAYLOR. I would like to just make a brief comment to that.

I am Pete Taylor and I am a member of the staff.

Commissioner, we have a recommendation further in this report as it is developing that would deal with the problem of condemnation of lands.

My recollection of the loss of land through condemnation proceedings since 1934 is that it is roughly in the area of 1,800,000 acres.

Congressman MEEDS. That is my understanding too.

Mr. TAYLOR. But the land loss through condemnation proceedings has been rather monumental.

I don't believe that we can so restrict the power of the Government that they cannot condemn lands in the future. I know that some people would like to see that as a policy but the solution that my task force suggested was that first of all, all Federal condemnation laws be made subserviant to the law which we are proposing.

The law which we are proposing is that for every acre of land that would be condemned, the Corp of Engineers, or whoever it is, must, in turn, condemn a similar number of acres of non-Indian land and turn that over to the tribes so that there will be no further shrinkage of tribal land base.

To me, that is in keeping with simple principles of fundamental fairness and it carries out the so-called—the declared congressional policy protecting Indian land bases and seeing that they don't shrink any further.

I am sorry to say that the Federal land acquisition practices over the past 40 years have been a mockery of the declared principle, when we really examine the facts; and I am sure everyone here would really agree with this.

Congressman MEEDS. Then No. 2 would not in any way put this Commission on record as believing that there should not be at least some method for condemnation of Indian lands, assuming it is a fair process.

Mr. HALL. That's correct.

Mr. TAYLOR. There must be some disagreement on that. I think I would see it the same way Gil has. I think the principles on that northwest ordinance—in fact, every time we condemn a parcel of land, condemnation by itself says it was taken involuntarily.

So, there may be some area for discussion of just what is meant there.

Congressman MEEDS. That is the thing that bothered me, the whole concept of condemnation is that it is acquisition by a procedure in which you don't have a willing buyer and a willing seller or a willing giver.

Therefore, it is not voluntary.

Mr. TAYLOR. If we gave this offsetting acquisition of land to the Indians to compensate for what we are taking involuntarily, perhaps that would constitute a compliance with this commitment that lands are not being taken without consent; because it is being continually replenished.

Congressman Meeds. I don't want the record to indicte that I am agreeing with you that that is the only way the Federal Government can condemn Indian lands. My personal opinion is that the Federal Government ought to be able to condemn Indian lands the same as it can my lands or the State's lands.

Now, there is a disagreement here.

Chairman Abourezk. May I interject, Lloyd?

It seems to me you could handle that somewhat better because this statement does, you know, leave a lot of questions unanswered if you leave it just as it is. Wouldn't it be better to say that it is going to be the policy of the Government to no longer erode the Indian land base, and then wouldn't that leave room, if there is a necessary condemnation that must take place, for some kind of replacement of the land.

Now most non-Indians—I think this is a fairly accurate statement, are not happy with the condemnation of their property; somehow stay willing to accept money for it, and in some cases, even an exchange of land.

But, because of the great concern of the Indian people over the erosion of their land base, it is easily understandable that they would want that replaced in the event there is a necessary condemnation, so couldn't you change the language and accomplish what you want?

What does the rest of the Commission think about that?

Mr. Whitecrow. Mr. Chairman, I would like to speak to this trust responsibility question in that I have always wondered where does trust responsibility begin and end.

From a standpoint of the treaty relationships with tribes and/or other legal relationships that are in existence, a trust responsibility, as I see it, requires the Federal Government to provide the protection of the land holdings of a tribe and its tribal members.

Also, it provides for those employees of the Federal Government to administer this trust responsibility at every level. I think if we do anything with this, we are going to have to be assured that it is worked in such a manner so that every employee involved in the delivery and the application of trust responsibility fully understands what his responsibilities are as an employee of the Federal Government.

For instance, recently I am aware of one particular instance whereby a tribal member wanted to sell her land. She requested that the Bureau of Indian Affairs go through the process of selling her land for her. The Bureau appraised her land at $6,800, a 40-acre tract of land as I recall; and as she went on the open market, and seeking bids of her own, she received almost $1,000 per acre for her land.

Now to me, this was a violation of trust responsibility of the Federal Government. And it would also indicate mismanagement in this particular aspect.

So, I would think, if we make this approach, we should certainly guarantee these treaty rights and the protection of our tribal rights, so that there would be no infringement from the state upon treaty obligations of the Federal Government.

I personally have had many opportunities in the past several years to make presentations in regard to this and I have had some people ask me, "Well, how long do you think the Federal Government should continue wiping your nose as an Indian?" And, I tell them that I don't think the Federal Government needs to wipe my nose as an Indian; but I do feel that the Federal Government is responsible to live up to their treaty obligations, to give all Indians the opportunity of developing as we choose, under the Constitution of the United States, and under the protection of the treaty rights.

Then I usually end up my conversation with these people in asking them how long did you expect the word of the Federal Government to be good, and I would hope that we all look for the Federal Government's word to be good for as long as we have a nation.

So I think this trust responsibility is a very grave issue and I think we need to lay it down as a Commission, a very solid base for the future, because this might be the last opportunity we will ever have to approach this question.

Thank you.

Senator METCALF. Mr. Chairman, when you get a patent from the Federal Government it says that you have this land to hold forever, just the same as the language of some treaties, and the next day the Federal Government can come out and condemn that land for a highway or a road or a Corp of Engineers dam, anything of the sort.

I think that we are dealing with a special sort of situation here, where the Indians are very much concerned about their land, their land base, the land that has actually been left to them.

A few years ago I fought a bill, and fight similar propositions still—that when the Federal Government takes any land under the sustained yield of forestry provision, it would provide additional land to the person or the lumber company in compensation. Originally that bill provided that they could go into the Federal courts, for instance, and acquire some forestry land and that would take the place of that sustained yield operation.

I don't deviate from my opposition to that proposition, that by and large, even though we say to somebody that this is yours to have and to hold forever, we could compensate the landowners, as the chairman has said, by monetary payments.

Nevertheless, it seems to me that there is some little difference here in trying to preserve the little land that is left to our Indian community, but I would certainly not want to take away completely from the Federal Government, or say that we should deny from Congress the opportunity to either legislate or delegate, the right to take some of the land for a higher, public purpose.

Nevertheless, I would abandon my customary opposition to compensation by land in the special Indian situation. I would hope that something along the line that the chairman has suggested, that we would say, we would not erode the Indian land base and we would try to replace land with other land of equivalent value or something of that sort when the Federal Government takes Indian land.

Although, I am not abandoning the proposition that insofar as taking land from non-Indian corporations or something of that sort, we compensate them with monetary compensation.

But I would hate to go as far as suggested here. I think the chairman has made a strong suggestion that we try to preserve the Indian land base and at the same time prevent erosion of it, but we should get permission in the greater public interest to take certain Indian lands and compensate them with other lands.

Chairman ABOUREZK. Lloyd?

Congressman MEEDS. Mr. Chairman, I find myself in agreement with some of what the gentleman from Montana, the gentleman from South Dakota has said, and certainly recognize and also believe that there should be no erosion of the Indian land base; but again, I hate to restrict the sovereignty of the Federal Government to deal with the Indians and Indian lands in any different way than it can deal with State lands for instance.

And I would suggest that perhaps the staff could grant a recommended condemnation procedure to be used and utilized in any instance by any department or agency when condemnation was contemplated of Indian lands in which the principle is set forth that there is a desire by the Federal Government not to erode the Indian land base, and that all steps be taken which will allow tradeoffs or compensation in like land or similar land; if that is possible.

But if it is not possible, I do not want the Federal Government limited to condemnation only when it can replace the land.

Chairman ABOUREZK. Charles—yes, Commissioner Borbridge?

Commissioner BORBRIDGE. Mr. Chairman, in examining this entire question, I rather come from the other end of things.

I think that in part, understandably, we have sought to analyze the possible impact in terms of the restriction of the power of the sovereign. I think that we cannot argue as to the specific powers that the sovereign is able to exercise.

However, I see an overlying theme here. In looking at the findings I see it as No. 1, and as such it deserves repetition: the utmost good faith shall always be observed toward the Indians. I really have no difficulty in accepting point 2 as an outgrowth of point 3. Their lands and property shall never be taken from them without their consent.

We agree that there is a special relationship between the native Americans and the Federal Government which, in my view, transcends and is important to the exercise of the power of that sovereign. The U.S. Government needs to admit at this point that there is a specific origin of this special relationship existing between native Americans and the Federal Government. If we, at this point, as a Commission advance a recommendation that there should not be an erosion of the land base of the native Americans, I think that it is important that we be able to demonstrate that such a concept or such a principle if adopted as policy, was derived from the course of history and from the Indian treaties, Federal statutes, and judicial decisions.

I think it is quite important that the native Americans be able to point not only to the fact that if we do come out with a proposition that the land base should not be eroded there is a reason for this which is historic and goes far beyond our present feelings here as a Commission. It is important that we should go on record as stating that the above should be a policy because it is firmly based on rights that are derived from the Federal trust relationship and are derived in turn from the treaties with the Indians, statutes and judicial decisions.

I would be hopeful, therefore, in the process of our developing such a recommended policy that it might be considered under point 2.

Point 2 should not be considered without reference to the rights which preexisted. On these rights, we base the recommendation that we are considering, namely "that the land base should not be eroded."

I think it is quite important that the two not be separated.

Mr. WILKINSON. Mr. Chairman, if I might first of all make clear what recommendation 2 on page 2 is.

The staff has taken all of the findings of the task forces and has come up with consensus task force findings simply as background for the Commission. What is on page 2 is not a staff recommendation to the Commission at this time. This is an indication of some of the different matters the different task forces have studied.

Staff will later be recommending a consent requirement to the Commission. The staff recommendations are at the end of each chapter and begin here on page 18. So, perhaps it would be helpful for the Commission fully to appreciate that this passage is not a recommendation of the consent requirement. This is simply a statement of what the Northwest Ordinance——

Chairman ABOUREZK. Let me ask you this, Charlie, do the staff recommendations come anywhere near the task force recommendations?

Mr. WILKINSON. What I was going to say, however, is this is a statement of the Northwest Ordinance.

Chairman ABOUREZK. I understand that.

Mr. WILKINSON. Well, later on we have a task force statement that does include a consent requirement but that is at the end.

This is background information.

Chairman ABOUREZK. All right.

Well this has been presented to the Commission as a finding which we either adopt or don't adopt. Now are we wrong in that notion?

Mr. HALL. What we are asking for, Senator, is on page 20. Those are the six principles we are looking at and No. 4 goes to the question we are discussing.

Chairman ABOUREZK. Why don't we then shift, like the Dallas Cowboys do occasionally and let's take up what we have to deal with.

In other words, we need from the staff, let me make it very clear to the staff, we need to be presented by the staff the issues we have to decide, and I don't think it is fair to bring anything else up in front of the Commission except the matters that we have to decide and so, therefore, if you direct us to a page that you say you are going to write your final draft on the report on or your first draft on, that is the one we want to deal with. And, if you don't direct us to it we assume that is not going to be in the report.

We have to assume that because we are not going to let you put anything in the report that we don't pass on as a commission.

So, if you say that this is just out of the Northwest Ordinance and that you are not going to write it in anyway, I wish you would have told us——

Mr. HALL. I'm sorry.

Chairman ABOUREZK. That's all right.

Mr. HALL. We were reversing the process there and considering findings first.

Chairman ABOUREZK. We just want to make you feel guilty.

Mr. HALL. Let me clarify then.

Page 20, "Recommended Commission Action." There are six items. Those are the ones we are asking for a vote on.

Chairman ABOUREZK. Now these are going to be the recommendations if we adopt them, right, starting on page 20?

Mr. ALEXANDER. Yes. At this point, what we are asking—and these are derived from the task forces and from other information—are the adoption of these general principles.

If you adopt those or some variation of those, our next step would be, we think, and that is what we ask in the very last part of it, page 21, is to go back through and come up with specific recommendations and a draft of the text for you to then reconsider at your next sitting, or your January sitting.

Chairman ABOUREZK. That is fine.

Now, what will the text look like; it will have recommendations, No. 1?

Mr. ALEXANDER. Your suggestion was, and that was within our thinking, to start off with the recommendations and to have a text section that discusses the law, the testimony and input from Indian country and others. That would follow that as a supporting documentation.

Chairman ABOUREZK. All right.

Now you also put in the backup material to the recommendations.

Mr. ALEXANDER. Yes.

Chairman ABOUREZK. Just in the event that the Commission decides to vote against the task force recommendation, you would also state then, in the backup material, that although testimony and research could bring only one conclusion, that the Commission decided it should be otherwise.

I think it should be clear. It should be made clear that way, that in fact it was a Commission action and not a task force action. Of, if it agrees, if the Commission agrees with the task force, that ought to be stated as well on these major points.

Now, does that sound good to the members of the Commission?

Congressman MEEDS. Could you restate that?

Chairman ABOUREZK. What I said was, if we decide to overrule a task force or a staff recommendation, assuming the staff recommendations have adequate documentation and backup material, that should be so stated in the report.

Is that fair?

All right. So, why don't you start with what the general thrust of your drafted chapter will be so that we can discuss that and tell you whether you are right or not.

Mr. HALL. OK.

No. 1, on page 20, the "United States Trust Responsibility to American Indians" is an established legal obligation which requires the Federal Government to protect and enhance Indian resources and tribal self-government. This includes the duty to provide whatever services are necessary for such protection and enhancement.

That would be a principle or a modification of a principle that would guide us in drafting that portion of the chapter dealing with——

Chairman ABOUREZK. All right.

Now the second sentence of that paragraph; what services are you talking about?

Mr. HALL. Well, we are not suggesting there, I think, that we itemize the services that number one requires. We are suggesting that there are some services that are required of the Federal Government pursuant to their trust obligations and those are specifically related to the Indian resources and land and self-government.

Chairman ABOUREZK. Give us an example.

Mr. HALL. I think a good deal of the services, for example, that now are being provided by Martin Seneca's office in BIA is an obvious one: Technical expertise and assistance with regard to preventing land erosion, development of mineral rights, forest management, and others.

I would think that would include also services like those in section 104 of Public Law 93–938, which are intended to stabilize and strengthen tribal government.

Chairman ABOUREZK. What is that specifically?

Mr. HALL. You ought to address that.

Mr. ALEXANDER. Those are the moneys of 638 which replaced the tribal government development funds that were utilized previously to strengthen the operations and the mechanics of operating tribal government—records, assistance, whatever, those types of funds.

Chairman ABOUREZK. Give us some more examples of the services you have in mind.

Mr. ALEXANDER. The economic development, technical assistance moneys, the Indian Finance Act and its declarational policy provides a basis for enhancing and developing tribal government and tribal resources consistent with the self-sufficiency concept which is found within 93–580.

Chairman ABOUREZK. What is in 93–580?

Mr. ALEXANDER. In the preamble is a statement, which I would gather is congressional policy, that one of the purposes of the Commission is to enhance tribal self-sufficiency and Indian Finance Act and other congressional declarations have provided us with guidance in defining what types of services that go to protecting tribal resources and enhancing and developing those resources; both in the governmental sense and in the land-natural resources component.

I am not sure if that answers your question.

Chairman ABOUREZK. Well, yes. Some of it.

Any other questions?

Congressman MEEDS. I have a similar question, Mr. Chairman.

Let me give you an example, and I know there is some question about tribal members and food stamps and things like that, but I am just using this as an example.

Assuming that because of the income level of a member residing on a reservation, he would, as would any other person, be entitled to receive food stamps. Then let's assume that the tribe applied for and got a nutritional program through some other program to upgrade the nutritional standards of the entire tribe; and to make it work it would be necessary that all people in the tribe participate. By the last part of No. 2, am I to understand that the member would be able to turn down one or the other of those—whichever he or she chose?

Mr. ALEXANDER. Well, this is what we would consider the concept of dual entitlement.

Congressman MEEDS. I have no problem with dual entitlement. We have certainly thrashed this out in the Alaskan Native Claims Settlement Act.

I have no problem with dual entitlement except that when as a member of an organization, when that organization participates, then I don't think you are entitled to dual entitlement in some other program.

I want to be assured that you are not intending to cover that kind of situation.

Mr. ALEXANDER. To use the example that you gave us, food stamps and a nutritional program, I think this gets us back to why we say it is an evolving concept and so much of the trust relationship depends on the dependency status and these notions may change as economics and situations change.

In a current situation where a food stamp program is generally acknowledged to be not totally sufficient to meet all needs, there would be nothing inconsistent whatsoever with a dual entitlement to both programs.

Now, in a situation, if we can project it hopefully with a nutritional pattern in Indian country, it is sufficient. Then the Federal Government's obligation under the trust may in fact shift in terms of what is needed with respect to nutrition or food stamps, with the Indian citizen as part of its U.S. or State citizenship is entitled to under the 14th amendment is a completely separate item.

If he meets those standards or she meets those standards under those categorical programs, they are entitled.

Congressman MEEDS. I don't have any problem with what you said, none whatsoever, and perhaps I can clarify my position by asking you why is it necessary to enter the word "citizen," use the words "or which his tribe may receive," on the same basis as any other governmental unit?

Mr. ALEXANDER. Because the trust relationship is conceived of as arising from treaties and dependency status between one political unit with another political unit and running through the tribal governmental structure to the Indian citizen in terms of the trust relationship.

Now in the draft, the several pages that precede this draft, there is talk about the prime trust relationship and other components of the trust relationship.

What we were talking about, just now in the food stamp example, is something that may in fact change. It hasn't yet but it is a dependency status through the course of dealings that in many situations gives rise to special needs in education and health and social services. Those needs may not exist forever in time.

The basic prime components of the trust relationship that we are talking about in the other component which relates to the permanency of tribal government, the protection of the land resource and the protection of tribal government, institutions do not change as they may change in the operational sense of what moneys are required, what particular governmental actions might be required to protect those attributes in litigation.

But, they do not change conceptually. The facts do not alter that necessarily. And, that is how we have defined the two baseline components here.

Congressman MEEDS. Could you say U.S. citizenship or as a member of an Indian tribe?

You see, what I do not want to get into is a situation where as a governmental unit, a tribe is entitled to certain things and then an individual Indian says, "The hell with that. I want to take it over here somewhere," and ruins the operation of the tribal thing.

Mr. ALEXANDER. I have no problem with the language that you suggest. The only thing that I would reemphasize, and in case I have not made it clear, is the notion of dual entitlement.

Congressman MEEDS. No problem.

Mr. ALEXANDER. OK.

Congressman MEEDS. I think Indians are entitled to treaty rights, to the rights of trust responsibility to be exercised, and to rights as U.S. citizens. I don't in any way want to impinge on that.

Mr. ALEXANDER. Thank you.

Mr. BORBRIDGE. As I understand it then, the change which is proposed for consideration would have no adverse impact on the principle which is being advanced; and that is tribal status conferring on an individual's basic rights which are alluded to in part 2.

Congressman MEEDS. That is right. Not in my view.

Mr. BORBRIDGE. OK.

Congressman MEEDS. And yet, will avoid the problem that I had at least tried to articulate.

Any further discussion of the numbered recommendations 1 through 6?

Ms. DEER. I just wanted to say that in my opinion this will greatly enhance the understanding among everyone concerned with this whole trust concept, that I think many people are unfamiliar with the fact that there has been mismanagement of the trust and I feel that if we adopt these basic principles and it is clearly understood by all concerned that it will save a great deal of litigation and dollars for everyone in future years.

Congressman MEEDS. Further discussion of items 1 through 6?

Mr. WHITECROW. I would like to call the Commission's attention to No. 3, whereas the trust responsibility is a legal duty required of all Federal agencies and instrumentalities. There should be one prime agent of the trust.

Currently, the Department of Interior is charged with insuring that the trust is carried out faithfully. I think one of the bigger problems that we have had in the past is the fact that so many different people are defining trust responsibility and many of them have actually defined trust responsibility as to mean control; and I think we need to really get into this aspect of it to be sure that we have a deviation between what the trust responsibility is, what legally binding trust responsibility is, and what control is.

Now, are we covering that aspect of it?

Mr. ALEXANDER. Commissioner Whitecrow, what we set out here are principles that hopefully we can integrate in specific findings and recommendations.

We have a number of very specific recommendations that will become apparent particularly in the tribal government area which defines in some great detail the specific problem that you have addressed and makes a number of recommendations on what should be the scope of the Secretary's (or wherever that authority should reside) power with respect to the tribe, what options are open to the tribe, and perhaps, some suggestions in relationship to negotiations of the trust component.

We are very specific on that in Chapter 6.

Mr. WHITECROW. OK.

I am fearful of the fact that we may find those responsibilities, that definition of responsibilities, someplace within the report and I think that is one of the major issues that we have here, the actual definition of what a trust responsibility is by an employee out there in the field, actually functioning on a day-by-day basis.

As an example, we had an individual within our community in the past 2 weeks whereby we had discovered a man or a family cutting wood on tribally-owned land and we had a Bureau employee who refused to do anything about it because he said, "Those people may have a shotgun."

Now, where does that trust responsibility begin and end and I think we need to define that from the standpoint of this report.

Mr. ALEXANDER. The example you give is but just one. Every field hearing that I sat in on has numerous examples of specific problems and there are recommendations that will be coming up to hopefully deal with those problems.

Mr. Taylor, if you will, has some comments on your point.

Mr. TAYLOR. Commissioner, we do deal with this question of the secretarial control in chapter 6 on tribal government which we may or may not get to this afternoon, I'm not sure.

However, on the issue you are raising, what chapter 6 is doing is limiting the power of the Secretary and his control. It is not getting to the essence of the problem you are raising now, and I think that perhaps we need an additional paragraph here under this trust responsibility thing.

We are talking about the trust responsibility here, but I really believe that the only way this trust responsibility is ever going to be adequately carried out by the U.S. Government, whatever agency it chooses, is if there are rather fixed principles of liability against the United States for the violation of the trust.

The instance you are talking about, where trespassers come on trust land, steal your timber, you notify the Bureau of Indian Affairs; there is a clear responsibility to protect that asset and yet, no action is taken.

Now, the Bureau is hampered because it doesn't have the personnel to afford this protection, but the reason it doesn't have the personnel is because there is no squeeze on the United States where these violations occur.

If liability is going to be attached for these failures to protect trust assets, I believe the Bureau and OMB will put proper budget requests in front of Congress to carry out these things.

So, my suggestion, or something I think ought to be discussed right now, is the possibility of adding a seventh paragraph here dealing with liability on the United States for the breach of these trust obligations.

Chairman ABOUREZK. Well, that brings up a question. I think—I'm trying to find the number here. That should come in No. 5, paragraph 5.

Well, let me go back just a minute, before we get down to five. Jake, were you done?

Mr. WHITECROW. Yes.

Chairman ABOUREZK. I wonder if it isn't a mistake to say—well, actually, I guess you don't say it, you say, "Currently the Department of the Interior"— I would keep that probably as one prime agent of the trust because otherwise it would be contradictory to the other parts where you are recommending that the Indian Bureau be taken out of the Department. But I see that is only a parenthetical reference.

Mr. HALL. If we take some other action which would not leave the responsibility resting with the Interior, we would strike that relation and make it consistent.

Chairman ABOUREZK. OK.

And also, before we get down to No. 5, if—I'm just talking about procedure now—so far as how you write the actual recommendation itself, and we are not worried about the backup material for purposes of this discussion right now.

The recommendations, I believe, ought to be in a form that if there is a bill needed to be drafted, then the Commission and Congress will know from reading that recommendation that it will have to go into legislative form. Or, if it is something that can be done by Executive order or a general policy statement, that's how the recommendation ought to read.

In other words, just as an example, your recommendation probably ought to read—one of the recommendations—ought to read the U.S. Government should adopt a policy, a policy that such and such and such and such is true, or that the U.S. Congress should enact legislation that such and such will take place, or the President should sign an Executive order dictating the following.

Does that make sense to everybody?

So that we will very clearly know exactly what you're recommending—there should be no ambiguity.

Mr. ALEXANDER. No problem.

Chairman ABOUREZK. All right.

Congressman MEEDS. Mr. Chairman, before we get quickly by No. 4, let's take on that knotty problem right now, shall we?

Now, I notice that there is an enlargement in the general statement of principle contained in No. 1 and in the implementation of No. 4. If I had trouble with No. 1, I've sure got trouble with No. 4, haven't I?

Could someone tell me what nontreaty rights are to be protected and not taken without the consent of the holder?

What are nontreaty rights?

Mr. WILKINSON. Well, if I might speak to that, Congressman, I think the present law on abrogation of treaty rights and other tribal rights has gotten to the point where it is almost completely clear. And it is very close to recommendation No. 4, although there is a difference that I will point out.

But first, I do want to say the condemnation of Indian lands has definitely been treated differently by the courts than has condemnation of non-Indian land. If my land or your land is to be condemned, it is treated differently.

Congressman MEEDS. I am aware of that.

Mr. WILKINSON. And the courts seem to require an express statement by Congress. In other words, if this Congress gives the Army Corps of Engineers general authority to condemn land in the West, that doesn't give them authority to condemn Indian land. Non-Indian land, yes, but not Indian land.

Congressman Meeds. Some circumstances, it has required three-quarters consent of the people involved and the tribe.

Mr. Wilkinson. That's right.

Now, when we say nontreaty rights, we are talking about a very important concept that has also been recognized in the cases which is that the courts are no longer looking just to treaties to determine basic Indian rights. There are many, many cases now which extend the trust relationship to Executive orders, to agreement reservations which have found hunting and fishing rights in agreements as well as in treaties. So the law, which in our judgment is clear now, and which we are asking this Commission to recognize, is not just treaty law.

Much of the law started with treaty law but it has now been expanded into other areas, such as agreements, statutes and Executive orders. And we think that the language "nontreaty rights" is very, very important because there are many Indian tribes who don't live on treaty reservations.

The courts are respecting those tribal rights just as they are treaty rights, and we are asking for this Commission to recognize those nontreaty rights specifically.

Congressman Meeds. Well, tribes don't have to live on reservations to have treaty rights.

Mr. Wilkinson. That's right.

Congressman Meeds. So merely because they don't live on reservations is no reason they should have to have nontreaty rights rather than treaty rights, is it?

Mr. Wilkinson. Well, I don't necessarily even mean to limit it to reservations. But you are speaking of the situation in which a tribe has rights, whether they are Executive order, treaty, agreement or statute. And those rights are recognized as part of the trust relationship, not by law but through consent——

Congressman Meeds. Could you give me some examples of those please?

Mr. Wilkinson. I think hunting and fishing rights are a classic example. The right to hold land is a good example. I think many of the benefits that have been discussed——

Congressman Meeds. What hunting and fishing rights are there that are not treaty rights?

Mr. Wilkinson. Well, *Antoine* against *Washington*, a 1975 case, involved rights by agreement.

Congressman Meeds. By Executive?

Mr. Wilkinson. No, by an agreement ratified by Congress.

Congressman Meeds. Well, I don't have any problems with those, you know, if they are ratified by Congress or anything like that.

But, if we adopt No. 4 now, we are saying that there shall be no condemnation of Indian land by the Federal Government or anyone else without the consent of the tribe.

We are saying, No. 2, any other treaty rights which may not be rights in land which can also be subject to condemnation of citizens.

For instance, if I have a business right, it can be condemned and we're saying that cannot be done now with Indian tribes or individuals. And, they have certain unspecified nontreaty rights which are the kind you described that——

Mr. Wilkinson. They could be reserved rights also.

Congressman Meeds. Well, I would hope that those are treaty rights. Reserved rights are treaty rights as Judge Bolt will tell you.

Mr. Wilkinson. Yes, but it is very important.

Congressman Meeds. I have no problem with that either.

Mr. Wilkinson. Well, I guess I should say that treaties are one way in which tribes can lose rights, and if rights are not given up in a treaty, they retain those rights.

Congressman Meeds. They are retained, exactly.

Mr. Wilkinson. For instance, basic rights of self-government are not given to a tribe through a treaty. They are rights which a tribe always had.

Congressman Meeds. Or given through IRA.

Mr. Wilkinson. That's right.

In other words, these rights preexisted the formation of this union. Indian tribes were sovereigns. The law is very clear, and there is no more important principle in Indian law. Felix Cohen stated it exactly this way, that Indian tribes are sovereign. They are governments and they retain all sovereign governmental rights unless those rights are taken away by treaty or by the express act of Congress.

Tribes do obtain some very, very important rights by treaties. But an equally important doctrine is that tribes have sovereign rights and if they don't give them up by treaty they continue to keep those rights.

Congressman Meeds. The same concept as the 13 States retained all rights which they did not give to the Federal Government?

Mr. Wilkinson. It's very similar, that's right. I think that is a good analogy.

Congressman Meeds. Well, Charlie, I don't know who else might feel that Indian rights ought to be subject to the same kind of condemnation procedures, compensation, everything else, fair hearing, all the protections of the 5th and 14th amendments and all other amendments; but I feel they ought to be the same.

If we accept that, if we accept No. 4, we are denying that that is a true statement.

Mr. Wilkinson. Mr. Congressman I think you know I'm going to say this: The courts do not now recognize that those rights are the same.

The courts have very clearly said that in the area of condemnation Indians have more rights. Therefore, if we now say that Indian rights are going to be the same, we are taking away very important rights from tribes.

Congressman Meeds. Very important interpretations of the courts.

Mr. Wilkinson. The courts said we are interpreting the existence of rights.

Chairman Abourezk. You are beyond condemnation now. You are into other—fishing, hunting rights and all. Water rights?

Congressman Meeds. Oh, yes.

Mr. Wilkinson. Yes.

Senator Metcalf. Mr. Chairman, may I ask a question? Do these nontreaty rights include the right to pollute the air or the right to pollute the water on Indian reservations to the detriment of people who live off the Indian reservations?

Mr. WILKINSON. Mr. Senator, I think you have opened a very important area of inquiry and it is a fair question.

Let me say this: The real question in the area of air and water pollution is whether this Congress is going to assume, as it does with the States, that the tribes can properly control their own environment.

In other words, what tribes really have is not the right to pollute the air or water, but rather as governments, the right to regulate on their own reservations to be certain that the air and water isn't polluted——

Chairman ABOUREZK. May I interrupt, Charlie, at that, before you go on any further. Did I hear you just say that the Federal Government doesn't regulate the States in those regards?

Mr. WILKINSON. No, I didn't. And I think the Senator from his State will appreciate that. I think it is literally true, that the cleanest air and the cleanest water we have in this entire country are on Indian reservations.

Senator METCALF. Despite the applause, I would modify that to some of the cleanest air and some of the most polluted water comes from Indian reservations and some of the most polluted air comes from Indian reservations.

What about such things as other resources? For 4 years Congress has worried about strip mining and reclamation and restoration of resources. In all of the legislation, we have never had a congressional action to control the Indians' resources, except the general delegation of power that we have given to the Secretary of Interior.

What if Congress said that the Indians in their leases, in their administration of their land, had to abide by the same laws and regulations that we impose on non-Indian land. Would that be a violation of nontreaty rights?

Mr. WILKINSON. Well, there is no question that Congress does have the power to do that. There is no question.

Mr. HALL. It's already been done to some extent.

Congressman MEEDS. Whether some administrative agency has the right to condemn Indian lands is questionable, but there is no question that Congress can condemn Indian land.

Mr. WILKINSON. That's right.

Congressman MEEDS. There is a question whether the Corp of Engineers can condemn Indian land without the consent of the——

Senator METCALF. But Congress can delegate that.

Congressman MEEDS. Not if we adopt No. 4.

Senator METCALF. I know. I'm just trying to make an inquiry here into areas of nontreaty rights opened by the very distinguished Congressman from Washington. Is it a nontreaty right to allow an Indian tribe or a foreign government to pollute water or pollute air or to pollute the general environment and cut off waterflow or is that an excepted right.

Mr. HALL. Senator, Congress to some extent has already addressed that in the National Environmental Protection Act which applies to tribes as well as States. The Department of Interior and the tribes have spent a great deal of time preparing impact statements pursuant to that act.

Senator METCALF. Do you agree with that?

Mr. Hall. We haven't reached a staff position on that, to be honest with you.

Mr. Taylor. Senator, I would like to respond to this problem too. It seems to me that in 1973 the Congress started on the right track legislatively on how to handle these conflicting matters between different sovereigns, the tribes and the States; one State vis-a-vis another State too.

It was the Land Use Planning Act that passed the Senate, and it included provisions in that act to authorize tribes to regulate land use within reservation boundaries.

It also required that their land use policy some way accommodate the plans of the State; also vice versa; that the plans had to—and the State had to in some way—accommodate the tribes. I think that's an extremely enlightened legislative approach to the problem and it incorporates the kind of principles that I think Federal legislation needs to show—a recognition of tribes as governments and a recognition that they have regulatory powers.

Bringing them into the intergovernmental structure here in these things like environmental protection, et cetera. Charlie Wilkinson already mentioned it. And when powers are going to be delegated to the States to regulate clean water and clean air, the same powers ought to be delegated to the tribes within the reservation boundaries.

Tribes have as much obligation to act responsibly as States do, but the Congress, in the contemplation of tribes, as governments, must take them into account as governments.

Senator Metcalf. Now let me ask you another question in view of the fact that its been alleged that the Indians have the cleanest air and the cleanest water.

Do they have a nontreaty right to protect themselves from State and Federal pollution of air and water on their reservations without an environmental protection agency or without special Federal congressional legislation?

Mr. Wilkinson. The basic point we would make Senator, if I do understand you correctly, is that the question of regulation on the reservation should be first of all a tribal matter.

Congress has the power to act, if Congress decides that there are serious problems on a reservation. But it is not a State matter. I think that's the key point.

Senator Metcalf. I think that's important and it is what I'm trying to bring out. Isn't tribal authority to act in areas on the reservation analogous to the State authority to act in areas under the State jurisdiction? Isn't that correct?

Mr. Wilkinson. As a very general matter, yes, they are both separate governments and the tribe does have that authority on the reservation; yes.

Mr. Dial. I wanted to say that it seems to me that we are beating this point of trust responsibility to death today and what I believe the men want to really get to is an overview of some, you know, general recommendations and we will hammer out these details later.

So, I wonder if we're not giving too much time to this today. That's what I have to say, and since I haven't said very much, may I also say that I hope that we will always include the 1787 paragraph of utmost good faith, because this is a good reminder to the Congress and to the people of the United States that we've gone astray many occasions when it comes to the treatment of Indians.

Congressman MEEDS. Mr. Chairman, I will be glad to pass this for the time, you know, without adopting it or rejecting it, if the Commission thinks we spent too much time on it.

However, I think it is a very, very important question, and a kind of key question as to where this Commission goes. We get ultimately to, and perhaps we should have started discussion on, the question of sovereignty—because that is what we are dealing with.

If we take a position which I know is judicially supported and which has been enunciated by members of the staff, we will be treating Indian tribes as complete sovereigns, with the whole bundle of sticks called sovereignty. The gentleman from Montana's concern is correct. They can regulate the waters on the reservations; they can regulate air, pollution, just like the Canadians can regulate their race horses at the border.

They may regulate activity, except as might be altered by treaty if we accept this position. I don't think that's a position we want to get in in this Commission, because if that's the kind of recommendation we're going to make, we're going to find ourselves in real problems with the Congress down the road.

Now, I believe that the maximum amount of sovereignty which can be given and utilized to tribes ought to be either reserved or given to the tribes, whichever way you look at it. But there is a sovereign power, which is—I hate to use the word "superior"—above not only Indian tribes, but States. That sovereign is the United States and the sovereignty of Indian tribes and Indian people has to be subject to the sovereign power of the United States. If we find ourselves or get ourselves either knowingly or inadvertently in some other posture, this report is not going to go very far. It's not going to go very far. I know a lot of you people out there believe and properly so with all your hearts and minds and desires that Indian tribes are complete sovereigns and indeed the courts have in many instances treated them almost in that sense.

I am aware of that. But when we get down to the final question of what is workable in this Nation, we cannot have 244 or 366 or how many other reservations there are of sovereign nations within a sovereign nation. We cannot have it. We cannot have it and still function as the United States of America.

Now, I hate to be in the position of reminding or at least admonishing that that is the situation, but I fully believe that if there is total sovereignty within Indian tribes, that sovereignty has to be subject to the higher sovereignty of the United States.

If we don't enunciate that principle, and as I say, I'm perfectly willing to pass it over because it's a big issue on which I think we could spend days and probably not reach any proper solution, it is a key to whether or not our report is going to go anywhere, as I see it.

Chairman ABOUREZK. The way I read No. 4, correct me if I'm wrong in this, I think perhaps some of the staff comments have gone somewhat beyond what the language of itself is. But I read it to say that it is a statement that the U.S. Government will stop abrogating treaties; that it will be adopted as a policy statement for that purpose, not limited to that purpose, but that's one statement that No. 4 makes.

Am I wrong in that?

Mr. WILKINSON. That's one statement it makes, that's correct.

Chairman ABOUREZK. Then second, if they do abrogate a treaty, it's got to be done with the consent of the tribe itself, right?

Mr. WILKINSON. That's correct.

Chairman ABOUREZK. And, third, you are saying that if the tribe approves of the abrogation, then the abrogation has to be ratified by Congress.

Mr. WILKINSON. That's correct.

Senator, if I could say one sentence to clarify one thing. The consent requirement is probably not existing law. The express action by Congress probably is the existing law.

Chairman ABOUREZK. Right.

Mr. WILKINSON. So the consent is really what would be new in the kind of analysis you are talking of.

Chairman ABOUREZK. Right.

Now, the law as it now stands is that if Congress should adopt this as a policy, of course, it can abrogate this policy later on by another congressional act. A succeeding act overrules a previous act; is that correct?

Mr. WILKINSON. That's correct.

Chairman ABOUREZK. All right.

I would like to make one other statement before we go on to the other Commission members. It is my belief that this report should be a statement of the Indian people as to what the American Indian policy ought to be and I don't say that we ought to say in this statement unreasonable things, things that are totally unreasonable.

I think we should say in this report things that reasonable men can differ upon.

Now, Congressman Meeds has a vigorous difference with the concept that, for example, the treaty rights cannot be abrogated by a congressional act.

I believe they can be abrogated by a congressional act, they have been, they can, and they will continue to be. Whatever policy is adopted can be abrogated by a later congressional act, Lloyd.

Mr. WILKINSON. Many Indian people are deeply saddened by this, but I think the law is now clear that Congress can abrogate Indian treaties.

Chairman ABOUREZK. And if this were adopted legislatively tomorrow, it could be changed the next day.

Mr. WILKINSON. That's correct.

Senator METCALF. They would have to be compensated.

Chairman ABOUREZK. That's the case now, in fact. That doesn't change at all.

Mr. WILKINSON. That's right. They are entitled to be compensated.

Chairman ABOUREZK. What I'm saying now, the final point I'm trying to make, is that the report, the Commission report, ought to be, in every instance that it can be, a statement of Indian policy by the Indian people, and if the statement was by Congressman Meeds, that it may not sell, well, maybe very well, it may not in Congress, but my tendency is to be against trying to limit what the report says at this point.

I mean there may be things that I may not agree with, but I wonder if it might not be better to allow that statement to be made.

The Indian community is on record as saying what it wants and the Congress can either adopt that or reject that. Now, I'm not saying that we ought to go into a lot of crazy stuff and just say well, this is, you know, everybody, there are 800,000 Indians, we ought to have 800,000 individual opinions and you can't do that, of course.

But to the extent that we can, I wonder if it might not be a good thing, and I would like to hear from some of the other Commissioners on that viewpoint as well.

Mr. BORBRIDGE. Mr. Chairman——

Chairman ABOUREZK. I'm sorry. I guess, Louis is first.

Mr. BRUCE. I only wanted to respond to Congressman Meeds' statement. We have about 800,000, in this country, different kinds of governments. What's wrong with adding maybe 400 more. You were talking against that.

Congressman MEEDS. None of those 800,000 have complete sovereignty.

Mr. WILKINSON. But, Congressman Meeds, I want to say this, that there is nothing, absolutely nothing in the staff recommendations, or to my knowledge in virtually any of the staff reports, that would suggest that those sovereigns are not subject to congressional power.

Congressman MEEDS. Without their consent?

Mr. WILKINSON. In this case, it involves taking away some rights without consent, yes. But, there is no suggestion in existing law that the tribes are not subject to plenary power. And plenary power is the notion that is accepted in the task force reports.

Congressman MEEDS. There is this in No. 4, that they shall not abrogate it or in any way infringe upon without the consent of the affected Indian tribe. That is not now the present state of the law.

Mr. WILKINSON. That's correct.

Congressman MEEDS. They can be now subject to condemnation by act of Congress, not by administrative agency or there is some question about that but presumptively not.

And, what I am saying is that No. 1, they are not only to be subject to the plenary power of the Congress without consent, but they also ought to be subject as all other American citizens are and as all other entities are to a higher power, which is the U.S. Government through its agencies and administrative boards and other things.

Chairman ABOUREZK. Well, I think it is implicit in the law, but I would have no objections to making it explicit.

I mean, it's there anyhow and then, if it would be better, it might be better to make that as a statement that it's recognized that the Congress has plenary powers and that any act of Congress obviously will supercede another act.

I think that is what Congressman Meeds is saying, but it ought to be made a clear statement.

Congressman MEEDS. Mr. Chairman, what I'm saying is I don't think we ought to take an act which we will clearly supersede down the road somewhere. We've done that quite a bit in our history, as most of these people can tell you.

Chairman Abourezk. John Borbridge?

Mr. Borbridge. Having participated with the assistance of very good congressional friends present here, in the lobbying related to the settlement of the Alaskan Native Claim Settlement Act, I certainly am in a position to recognize that the sovereign has certain rights relative to Native Americans. Certainly one of the very important findings of the court in the case of *Tee-Hit-Ton Indians* v. *United States* was the right of the sovereign, if it chooses, to unilaterally extinguish Indian title.

But, I am not suggesting that we challenge whether or not the sovereign has that authority. Instead, I suggest that even the sovereign itself be subject to certain standards of conduct, and that the sovereign, with all of its power, should recognize whenever it has acted in contravention of basic Indian rights. We are saying, therefore, even the exercise of such basic sovereign powers must be sensitive to the causes of justice and humanity as they relate to the recognition of the aboriginal rights of our first citizens. Thus, the Government has a higher obligation: it has a responsibility, when exercising these rights, to recognize what these prior existing rights are.

Thus, the sovereign may, in fact, proceed to the condemnation of land. But it ought to have before it, in capital letters, a clear recognition that, for the Indians, this is a far different proposition and that such compensation is not compensation in terms of the Indian. It's compensation couched in terms developed by the non-Indian world.

The only compensation we Native Americans really recognize that is basic to our roots is an acre for an acre. And even then, we may suffer some dimunition of our base. I do agree that the attorneys could very effectively argue with me in terms of what the rights of the sovereign are, but I say the sovereign, the Government, has a clear obligation and that the obligation of the Commission is to identify these areas where it has clearly fallen short of meeting those obligations.

The fault of the Federal Government, as reflected in the history of this country, is that it has failed to consistently recognize these rights. It has failed as a matter of policy to recognize and to acknowledge its obligations. Thus, we must help guide the sovereign in the just exercise of its power and evaluate its impact.

I would suggest then that we have a twofold responsibility: one, to recognize what the nature of these rights as they relate to Native Americans are and what the nature of the rights of the Indians are.

Two, to so phrase our recommendations that we have a higher standard of conduct in the exercise by the Government of its sovereign rights. Then I think we will be fulfilling more accurately what I, at least individually, recognize to be the primary responsibility of this Commission.

Chairman Abourezk. Louie?

Mr. Bruce. I just wanted to ask a question here. On page 20 we are looking at the second paragraph: "Congress often contributes to the misunderstanding of the Federal trust responsibility." And then it goes on to say, sometimes inadvertently prevents Federal agencies from administering it in the best interest of Indians." And, it goes on to say some more, "even to the extent where a matter for appropriations for Indian programs indirectly encourage agencies to restrict eligibility for their trust services and programs."

All right. If we are saying all of that, then we get down to item three. Are we saying then that we are recommending really that the Department of the Interior be the responsible agency?

Mr. Hall. The ultimate responsibility still rests with Congress but in terms of administration of the trust it may rest with one agency. The law is clear now, I think, that the trust responsibility applies to the U S. Government generally, but it may be administered principally by one agency.

That's all it says, but still, it rests with Congress in terms of carrying it out.

Mr. Bruce. OK. I hope we're not overlooking that one item there.

Mr. Hall. That could very well be clarified, Commissioner, yes. That's a good point.

Mr. Bruce. OK.

Mr. Whitecrow. In all of the material that I have read thus far, I can find nothing in that that really insinuates or indicates that Indian tribes are in effect wanting to be totally sovereign. That is having sovereignty to the same point of pressures that the Federal Government has. I could find nothing there that would indicate this kind of an approach.

I would like to also state that coming from the state of confusion and the State of Oklahoma, I have really had serious doubts in my relationships with American Indian governments as to whether or not we have any sanity at all, because the area of Indian country that I come from, the State has certainly put us down to something similar to a civic organization.

Our tribal governments have really been put down to this particular standpoint. When in effect we begin looking at the jurisdiction question in the State of Oklahoma and as the education that I have been able to receive through these many months of reading, I really feel today that the State of Oklahoma is in somewhat of a questionable status insofar as jurisdiction is concerned, and the sovereignty of the tribes should possibly be aligned with the sovereignty of the State of Oklahoma.

I do not feel that anything that we have in this transcript today really infringes upon the sovereignty of the United States of America. I do feel that it brings the sovereignty of the tribes up to the same level, at least, with that sovereignty that a state recognizes and practices. I'm in complete concurrence with Commissioner Borbridge. I certainly feel that the Federal Government has the authority to make the final decision, and I think the Congress has exhibited this attitude in its past, and I feel it will continue exhibiting it.

But, I think this particular report from the American Indian Policy Review Commission should very definitely display the thoughts and feelings of the American Indian, because the American Indians are the people that have experienced 150 to 200 years of injustice and inequities in its treatment.

Then after this report is submitted, then let us go through the political processes to get that legislation passed that needs to be legislated.

Thank you.

Chairman Abourezk. Other comments?

Well, the staff is very clear as to what they should put in there, right?

Mr. ALEXANDER. Can I respond to something that you and Commissioner Whitecrow have just said that might cast some light on provision 4—which is the consent provision which has engendered so much conversation.

You both said that this should reflect the views of the Indian country and the Indian tribes. This is a reflection of those views. That consent provision is a position almost word for word, taken by NCAI in its recent Salt Lake City convention. It is supported by the tribal reports that have been submitted to us and it has been supported in principle by the Indian input that we have had and as staff, we felt it incumbent to put it in the statement that we presented to you because that is what Indian country has told us.

Chairman ABOUREZK. All right.

Would you, then, in your draft, include this language, include a statement that it is recognized that the Congress has ultimate authority, which is a true fact, and then there will be further action at the time you put it in your draft. Then Congressman Meeds and anybody else—I think you knew this, but anyhow, everyone will have an opportunity to write a minority report on any section in the event his point of view is not carried or if he feels strongly enough about it to write a minority report.

Congressman MEEDS. Mr. Chairman, we are not passing or rejecting this as a completed work at this time, are we?

Chairman ABOUREZK. No, no, no. I am merely suggesting to the staff that they include it. You know, there is some controversy about it. It ought to be included as one of the parts of the final report which will be acted upon then.

Congressman MEEDS. Well, then, may I also have the opportunity to write a suggested subpart 4?

Chairman ABOUREZK. Absolutely.

Congressman MEEDS. Which we can either vote up or down.

Chairman ABOUREZK. That's right. We can work it around so we can vote it as an amendment or vote it as an alternative or whatever.

That's right.

OK. In No. 5, I wanted to ask a question following up on Senator Metcalf's question. A statement, I think, ought to go in No. 5. He asked at the outset, if you recall, that there ought to be some sort of distinction made between how the Federal trust is carried out toward the Indian people and how a regular trustee undertakes his responsibility.

I think, perhaps, in No. 5, that will be a place to set out that difference.

Mr. HALL. No problem at all, sir.

Chairman ABOUREZK. On No. 6, I don't know if a distinction is important or not, but when you say the United States holds bare legal title to Indian trust lands, it just seems to me that it might be better to say the United States holds all the trust title and that equitable title is held by the Indian tribes.

Would that be a more accurate reflection of the existing——

Mr. HALL. Well, I think they are both saying the same thing. I think everyone here would agree that No. 6 is an accurate statement of the law as it is now and it is intended to just emphasize that the Federal Government is a trustee and that the owner of the land——

Chairman ABOUREZK. Well, my interpretation of legal title, whether it's bare or fully clothed, is that that is total title. So, it doesn't seem to follow logically to say that to me, at least.

So, unless there is objection to it, I would just as soon you would say that they hold trust title to it.

Congressman MEEDS. Mr. Chairman, I don't know about South Dakota, but in Washington, the words legal title and equitable title are words of art, and I think they say exactly what these gentlemen mean to say. I agree with them that the Federal Government holds legal title, which is bare, and equitable title in any kind of trust relationship where the title is held by the trustee. It is bare legal title and the equitable title is held by the persons for whom the trust runs.

These are words of art as I understand it.

Mr. HALL. That's correct, sir.

Chairman ABOUREZK. Well, apparently this was drafted by people up in your part of the country. That's not the way I would do it in South Dakota.

How about if you said you hold bare legal title in trust, so we take in both sections of the United States. Well, you might want to work on that some more, come up with something that would be acceptable to everybody.

Mr. HALL. As Congressman Meeds said, they are words of art and this principle is intended to make it clear that we are not talking about complete control over Indian land. We are only talking about legal title.

Chairman ABOUREZK. OK. Anybody else?

Ms. DEER. To summarize my thoughts and feelings on this, we'll get down to the question of a sovereignty and jurisdiction and the amount of the degree that the tribes want; and speaking on behalf of myself, I don't think of many Indian tribes across the country, the tribes want more sovereignty and more jurisdiction.

Mr. TAYLOR. Mr. Chairman, we did have one question about whether a provision should be added in here with respect to the liability of the trustee.

Chairman ABOUREZK. What would you put in in that regard?

Mr. TAYLOR. It would be a provision at the end of paragraph 5. It would be, I suppose, in the nature of the U.S. Tort Claims Act. It would be a waiver of the immunity of the United States authorizing suits against it for damages sustained by a breach of the trust obligation.

Well, there would also be an attorney fee provision. I'm not sure whether that would come here or later in this book.

Chairman ABOUREZK. I have already had one attorney's fee bill named after me this year.

Mr. TAYLOR. While I have the microphone, I would like to add just one more thing on this item that you raised, Mr. Meeds, regarding condemnation.

My inclination is in your direction. I don't think I favor putting language into recommendations that come out of here that clearly are going to be violated within the next 2 or 3 years.

That is why I like the idea of a condemnation statute that requires, as Mr. Borbridge says, an acre for acre compensation. I would rather build in machinery that will be able to work and still meet trust obligations.

Congressman MEEDS. Well, I'll just advise you, Peter, I'm going to draft or have drafted a substitute for that which would set forth a vehicle for condemnation which would clearly set that up; and some other things. However, condemnation would be utilized only in rare instances, and with the benefit of the person to whom the trust runs in line and with the requirement that there be replacement of land and/or other rights which might be taken, where those rights can be compensated in kind.

Chairman ABOUREZK. I wonder also if it might not be a good idea to deal with the concept of sovereignty.

You really dance all around it in this section. Have you got another section on it?

Mr. ALEXANDER. Chapter 6 is rifled through with it.

Chairman ABOUREZK. OK. Well, then, I will wait and speaking of chapter 6, unless there are other questions or comments, we are ready to go to chapter 6.

Congressman MEEDS. Have we been through all the recommendations?

Mr. HALL. Yes, sir.

Congressman MEEDS. Just those six.

Mr. ALEXANDER. Those six.

The second component of that is that we integrate specific findings and recommendations on the basis of those six principles and what in effect we have asked you for is guidance based on those six principles to adopt, to tell us to proceed on that basis, and so on.

Congressman MEEDS. Well, Mr. Chairman, before we pass this area I'd like to ask some questions and make some comments. I have not had the opportunity to read all of this, but what I have read appears very good.

I did read the staff summary on the task force report, and as I understand it now, your recommendations contain all of the recommendations which are going to be made with regard to the task force No. 1. Is that correct?

Mr. ALEXANDER. Its bald outlines of consensus and what we have filtered out of task force 1, also task force 9 and other materials.

And, we would follow along the policy guideline with specific types of recommendations which may be directed towards Executive action or specific legislation or so on.

Congressman MEEDS. So we may find some of the specific recommendations of task force No. 1 in chapter 6 or 7 or 8 or something like that.

Mr. HALL. Yes, sir.

Congressman MEEDS. May I just ask quickly then, where does the establishment of the independent agency for administering Federal responsibility occur then down in No. 7, probably?

Mr. ALEXANDER. Chapter 7, Federal Administration.

Congressman MEEDS. And that then would contain all the recommendations, if any were accepted with regard to the full-time Secretary and the Board of Indian Control and other things which were contained in task force No. 1.

Mr. HALL. Yes, sir. I can see alternatives in this chapter also. For example, Senator Metcalf's comment about NEPA. There is a task force recommendation with regard to NEPA application to reservations, and I personally do not agree with it. We may very well end up presenting two or three alternatives to the Commission to resolve those specific questions.

Commissioner WHITECROW. I would like to ask—Ernie, have you been in a position insofar as indexing the various subject titles in this report?

We seem to be pretty well hung up on trying to determine where and in what chapter such and such might be in. I know we've got a table of contents by chapter but we don't have any special index by subject matter. Do you plan or is it planned to put that kind of an index into the report so that anyone picking up the report would be immediately able to go to a specific page to make a determination?

Mr. STEVENS. We can do that. Maybe Paul or Gil ought to elaborate on it.

Mr. ALEXANDER. It is our conception of the final report printed document that it would be professionally indexed with cross references to any subject.

Commissioner WHITECROW. OK.

Chairman ABOUREZK. Any other questions on chapter 5? If not, we will take a 5 minute recess before we go to chapter 6.

[Brief recess.]

Chairman ABOUREZK. The Commission will resume its meeting.

I don't know, Commissioner Deer just suggested we have a motion of some sort to get you guys on the way with chapter 5 and with each succeeding chapter. I don't know if we necessarily need that, but I think in the context of what you have presented to us, and our discussion, I think you should feel free then to go ahead and start drafting based upon all of the discussions we've had today, and which you have given to us; if we didn't object to it, you've got to assume that that should be in there.

Congressman MEEDS. Mr. Chairman, could any of the Commission members reserve the right to make suggestions to the staff or have later amendments or embellishments of what has been said?

Some of us have not had an opportunity to read all of this. I would like to expedite the procedure and I appreciate what the chairman is doing, but I would like to have an opportunity to read over all of it before I, in effect, pass it except for those things that are already noted.

Chairman ABOUREZK. Absolutely, fine.

Congressman MEEDS. I don't want to make a lot more work for the staff or anything like that.

Chairman ABOUREZK. No; that's very acceptable to the chairman and I assume it is acceptable to everybody else.

OK. You are ready then with chapter 5. Do we need a motion, do you think we need something like that?

Senator METCALF. Mr. Chairman, in view of the discussion, and I think the discussion has been useful, I don't think we need a motion. The staff understands some of the questions that have been raised and some queries that have been raised and we can go forward and see what develops.

I think all of you understand that there are some problems involved here that are minor and some that may go to the Supreme Court.

Chairman ABOUREZK. It may not even be possible to form a motion of that kind anyhow.

Senator METCALF. I don't think it would be advisable right now to put such a motion.

Chairman ABOUREZK. All right. Then do what you have to do, I guess. All right. Chapter 6.

Let me announce right now that today we are going to adjourn a bit early, at 4:30. There are some of the members who have to do other things today and will come back in at 10 o'clock tomorrow morning.

So, chapter 6, tribal government, Pete Taylor and Paul Alexander.

Mr. TAYLOR. I would like to introduce one other person who will undoubtedly be speaking to the issues of tribal government, Pat Zell, who worked on the task force number two report and has also been working with the staff formulating some of the issues that impede the tribal government in its operation.

I will start the discussion of chapter 6 by explaining the breakdown of that chapter.

We have a table of contents page at the very front of chapter 6, at least I hope it got into all of the Commissioner books. I had to insert my own this morning.

Basically, this is broken into five different sections which we have listed A, B, C, D, and E. The first section is legal status of tribal government, generally. One of the principal issues under this section is tribal sovereignty.

So, I suspect that we will not have finished our conversation by 4:30. Part B is governing capacity. This section will examine some of the typical problems that are plaguing tribal government today. This is the area where Dr. Zell will be addressing the problems.

Part C is tribal jurisdiction. This gets to the ramifications of what tribal sovereignty constitutes; and I think, more importantly, where the policy of Congress is going to be leading us over the next few years.

Part D is the tribal justice system and problems associated with the justice system, things that need to be done in order to—let's say, make it more functional.

And, part E is economic development. I might say that this book is in rather preliminary shape and my inclination is that part E will probably be moved farther back to chapter 8 dealing with natural resources. The recommendations that we have on legal status generally appear on page 9.

The discussion starts at the very bottom of page 9 and it runs through pages 10 and 11. Now I'll briefly go through what the findings are, and I would like to reemphasize that these findings are essentially taken from task force reports.

I think this recitation of our findings has to be accepted by the Commission as very much preliminary. It is based on summaries that were prepared of task force reports. As Paul explained earlier this morning, these parenthetical numbers refer to the task force report and page number from which that matter was extracted. It is not a verbatim statement from the task force report and I think in many instances we will have to go back to the reports themselves in order to put these findings into proper context.

But I believe this does generally reflect the shape of the way we would expect to develop the chapter.

Mr. ALEXANDER. The specific action with respect to legal status of tribes is found in the staff statement on page 10 which you may wish to focus on.

Mr. TAYLOR. If the Commissioners would like, I would be happy to wait a few minutes while you look at that or I could proceed now.

Chairman ABOUREZK. Why don't you proceed.

Mr. TAYLOR. All right. Then, I also think I'll throw in a short summary of the findings and I will start on page 2 of the chapter.

Well, I think I have to ask for directions. Do you want me to go through shortly the summary of findings or should we go immediately to the conclusions?

Chairman ABOUREZK. Well, I think it went better and it was more clear when you started with the conclusions in chapter 5. It seemed to me it went better and we can ask you to back up your conclusions with whatever findings there were.

We assume that your conclusions are based upon valid findings right out of the task force reports.

Mr. TAYLOR. Yes.

Congressman MEEDS. So we are now discussing recommendations?

Chairman ABOUREZK. Yes; I thought, unless you all think it's better to do it the other way, I thought he should go through the recommendations. We can discuss those rather than go through all the findings and discuss those. Does that sound better to everybody; it would seem to make more sense that way.

Congressman MEEDS. Reserving the right to go back to the other things, of course.

Chairman ABOUREZK. Well, yes. That goes without saying.

Mr. TAYLOR. Then our discussion part will start on page 10, paragraph No. 1.

The purpose of paragraph No. 1 or the basis of it is to supply an explanation of the source of the powers of tribal governments. It gets to the very fundamental issues of whether tribes are sovereign.

The acceptance of that proposition, that tribes are sovereign, it seems to me, is beyond question. All of our laws have been tailored on the concept that tribes are sovereign. Federal laws applying to the tribes have been ones of limitation.

I think the 1968 Civil Rights Act is a perfect example of that. The Termination Acts are a perfect example. Termination Acts do not say to tribes you don't exist; what they say is that we are withdrawing Federal recognition from your tribe.

The 1834 Trade and Intercourse Act obviously accepting sovereignty. The 1934 Indian Reorganization Act was premised on sovereignty. The question of tribes being sovereign I don't think is a debatable issue.

What is debatable is what it means.

Chairman ABOUREZK. Can I stop you there?

It is my impression that tribal sovereignty was established in probably the first big Supreme Court case—what is it—*Cherokee* v. *Georgia* or whatever; what was the name of the case?

Mr. TAYLOR. *Worcester* v. *Georgia* and the *Cherokee Nation* v. *Georgia.*

Chairman ABOUREZK. It was about the Cherokee nation. What specifically was that holding that—concerning sovereignty?

Mr. TAYLOR. You almost catch me flatfooted. It was simply a very clear recognition that we have drawn treaties with tribes. We have treated them as separate sovereigns, independent nations. We agreed to boundaries around reservations.

It was acknowledged that the reservation of that Indian nation was within the boundaries of the State of Georgia, but the basic holding of it was that, No. 1, they are separate sovereigns, but the reservation is within the State boundaries, but it is virtually extraterritorial to the State. The State laws could have no application whatsoever within the boundaries of that reservation.

Now, that doctrine has been eroded and the erosion came in *McBratney* v. *Draper*—pardon me—*U.S.* v. *McBratney* and *Draper* v. *U.S.* where the Supreme Court accepted the concept that the jurisdiction of the State reached within reservation boundaries as to offenses by one non-Indian against another non-Indian—well, *Draper* was 1896, so in 1832 when *Worcester* was decided until 1896 when *Draper* was decided, the State of the law was that Indian reservations are virtually extraterritorial to a State and not a part of it.

Essentially, the only right the State had with respect to a reservation was a preemptive right of first purchase if the United States consented to it and if the tribe consented to it.

Chairman ABOUREZK. Well, doesn't that kind of do in your argument that the sovereignty of the tribes is inherent? It seems to me that the tribes, according to law, draw their sovereignty from both Supreme Court decisions and from acts of Congress. Is that correct?

Mr. TAYLOR. No; I wouldn't agree to that, Mr. Chairman. The point is the tribes draw their power from their own independent existence and this is well recognized in case law. In fact, there was a case that came up in 1956 called *Iron Crow* v. *Oglala Sioux Tribe.* In that case, a Pine Ridge Indian was charged with adultery and he was up for trial in the tribal courts.

He took the case to Federal court and challenged the right of the tribe to maintain a court at all or write laws that proscribed his activity at all. He was a member of the tribe. In the *Iron Crow* case the court found that the powers of the tribe sprang from their inherent sovereignty. They were here before the U.S. Constitution was drafted or before the first white man came to his country, but the power sprang from within the tribe, not from any Federal grant whatsoever.

The doctrine of sovereignty is that tribes are totally independent. In fact, in the *Navajo Nation* v. *Native American Church*, decided in 1959, the court stated that the tribes, in fact, from a legal standpoint, enjoy a status superior to that of the State. There is a whole series of cases that held that the U.S. Constitution and the 10 amendments did not apply to tribes at all.

The first one was in the late 1800's, *Talton* v. *Mayes*, dealing with the legality of an indictment in the courts of the Cherokee Nation. A five-man grand jury had issued an indictment. Under the U.S. Constitution a grand jury is normally comprised of at least six people and this guy was contesting the legality of the indictment, because it was only a five-man grand jury, and the court there held that the U.S. Constitution does not apply to tribes at all. That was the breakthrough—the imposition of some standards for Federal review is what the 1968 Civil Rights Act was all about.

Chairman ABOUREZK. But you are also saying in the same statement that in any conflict relating to the power of tribes, the burden shall be upon the opponent to show the act or treaty by which power has been taken away from the tribe.

In other words, you are also recognizing that Congress has virtually total power over the tribe to remove whatever sovereignty that Congress might want to remove.

Mr. TAYLOR. That's correct.

Chairman ABOUREZK. Is that recognized in this?

Mr. ALEXANDER. This is in a sense, a classic reformulation of the principle of *Worcester* v. *Georgia* and the principles that are laid down by Cohen, and it is not to get very specific to the statement that you made previously about the earlier Supreme Court decisions.

That is a recognition by the U.S. judicial system of the preexisting sovereignty. It is not a grant from that judicial system.

Chairman ABOUREZK. So, you would say then that the sovereignty which was total can be limited by an act of Congress, and in fact, are you saying that is a true legal fact?

Mr. ALEXANDER. It is the legal fact under United States Law. Now, I think it is incumbent upon me to reflect some of the views in Indian country: there is a limitation to the U.S. law and that is it is the law generally of one party to the conflict. It is not Indian law; it is not necessarily international law. The fact of plenary powers and the powers of the U.S. Government exist because the U.S. Government ultimately is a powerful government, and its own recognition of its powers is not necessarily a recognition of powers by the tribes. The States, not the tribes, gave the U.S. Government in the Constitutional Convention a grant of powers.

This gets you into treaties somewhat, because there are grants of powers from tribes to the Federal Government in some specific areas in treaties where treaties can limit the inherent sovereignty, and that conception is spoken upon frequently in Indian countries and by thinkers in this area.

I feel it my obligation to report that.

Commissioner BORBRIDGE. Mr. Chairman, I just want to rephrase a basic point so that I correctly perceive what is being said. A little while back there seemed to me to be an intimation that the *Worcester* v. *Georgia* case posed on an example of the derivation of sovereign power by the tribes, and I want to be sure that we clarify that was not the case, but rather that the sovereignty of the tribes is recognized as one which preexisted the formation of the U.S. Government. Thus, if we view them in the context of legal decisions derived from litigation, or if we examine pertinent legislation, the impact is more one of modification or clarification. These tend to be more limiting than they tend to convey to tribes any power which they did not have previously.

Would this be pretty much what we are seeing here?

Mr. TAYLOR. Commissioner, perhaps they cut both ways. The judicial decisions that have come down in recent years, at least, I wouldn't say, limit tribal powers, but recognize, those powers as they are asserted. It is what is leading to many of the jurisdictional questions that we will be addressing a little bit later in this chapter.

I don't think these jurisdictional questions are really that relevant to this particular paragraph.

Commissioner BORBRIDGE. If I may comment there, because if I let the attorneys go on too long, then I lose the sense of what I'm getting at here.

What I see here then, to come back specifically to the point, is that it doesn't follow that in order for the tribe as a sovereign to exercise its power or to have its power implicitly recognized because of its current sovereignty, that this power necessarily has to be recognized as a consequence of a judicial decision. In many instances, a judicial decision does not establish and is not the origin of that power but merely recognizes what already exists and what perhaps may be legally challenged for the first time.

Is this essentially correct?

Mr. TAYLOR. That's totally correct.

Commissioner BORBRIDGE. Thank you.

Chairman ABOUREZK. The tribes at this point operate not under sovereignty but under modified sovereignty, don't they?

Mr. TAYLOR. That's correct, Mr. Chairman.

Chairman ABOUREZK. If I can remember the definition of sovereignty, that means within the boundaries of that particular sovereign the people and its government have total control over what they do within that government.

Nobody from the outside is able to tell them what to do.

Mr. TAYLOR. That would be a perfect sovereignty. However, I might elaborate on that slightly. Gil Hall was pointing out to me just before we started that in fact there are no perfect sovereigns in the United States, including the United States.

The United States derives its power from the grants from the States and in the 10th amendment the States withheld considerable numbers of powers. So even the United States is not a full sovereign.

Neither are the States because they gave the Federal Government certain powers in the Constitution.

Chairman ABOUREZK. But in spite of the fact that they have given up powers they are, the States themselves are, perfect sovereignties in that they at one time had 100 percent sovereignty and gave up part of it to the Federal, whether or not they can get it back.

Mr. TAYLOR. That's true. Without getting into the Indian issue, I would say that that is true, what you just said.

Mr. WILKINSON. I think, Mr. Chairman, Congressman Meeds has been using an example of sticks in a bundle. I think that really is what sovereignty is. The United States doesn't have all the sticks in the bundle, the States don't, and the tribes don't either.

Congressman MEEDS. It's just a matter of defining what sticks are left which gives us problems.

Mr. WILKINSON. I am not sure, but I think that is true. I believe we will find out as we go along that the law in this area, for the most part, is clear. There are unclear areas, but on the whole the question of tribal sovereignty is generally as clear as State sovereignty in most areas.

So, there are unclear areas but most areas are clear.

Congressman MEEDS. Well, let me raise one of those unclear areas if I may.

In that first paragraph at questions relating to the powers of tribes, the rule should be that tribes have all of the powers of any local sovereign. Could somebody define for me a little more what they mean by powers of any local sovereign?

Mr. TAYLOR. You have probably put your finger now on questions of jurisdiction. I would say that this statement is a statement that should reflect the policies of Congress in the direction that Federal Indian policy is going to pursue. It has been said, particularly with respect to the Five Civilized Tribes before the Curtis Act which almost destroyed those tribes——

Congressman MEEDS. Before what?

Mr. TAYLOR. The Curtis Act of 1906. In 1856 the Attorney General of the United States had to render an opinion on the tribal jurisdiction of the Choctaws over a non-Indian in a civil matter, and he equated the jurisdiction of the tribe with that which a State would exercised over a person going through the State.

What he said in that opinion, and what the Supreme Court also said in *Morris* v. *Hitchcock* which I think was decided around 1906, is that before the Court would find that a tribal government was lacking any power that would normally be recognized in a normal sovereign, it would insist that it be shown by explicit words in a treaty where that tribe had given up that power; and that power, the power of a local sovereign is general police power, general taxing power, regulatory power, and these are the jurisdictional issues that we will be coming to in—if I may refer to my outline, in part C.

It is a part that will be modified by our discussion when we get to that point.

Congressman MEEDS. Back to the original statement. We are just talking about the—not what is in the bundle of sticks but the—generally, the bundle of sticks, the thing called sovereignty and from where or how it was derived. And that general principle enunciated in Worcester, I believe you said, has never been overruled; is that a correct statement?

Mr. TAYLOR. Yes.

Congressman MEEDS. And that is all the first part of that is, down to the end of all inherent sovereignty. That is merely a restatement of the doctrine in the *Worcester* case?

Mr. TAYLOR. Yes.

Congressman MEEDS. Without regard to what it is.

Mr. TAYLOR. That's correct.

Congressman MEEDS. That might have solved determination, however, it might be later impinged upon by other factors and other things. That's where it came from.

Mr. TAYLOR. And down to that point, it's not only reaffirmation of a statement of *Worcester*, but of many, many, many judicial decisions.

Congressman MEEDS. Which have never really been overruled.

Mr. TAYLOR. Yes, that's correct.

Mr. WHARTON. For the purposes of analysis and approach to this thing, I guess when you come down to analyzing that, when you look into the sovereignty of the tribe, the search as to which sticks are missing and where you can identify those sticks in that particular way and not to find out which sticks are there.

Congressman MEEDS. So we are really getting now to where it is kind of a statement of principle. We are now in the second sentence, getting into the meat of this thing is what is jurisdiction, what is a sovereign, what are the powers of any local sovereign?

Well, the powers of the drainage district are sovereign in certain respects and the powers of the city are sovereign in certain respects, and the powers of the State and of the Federal Government are in certain respects. So, what do we mean, any local sovereign?

Mr. TAYLOR. I think the term local is a legal term and word of art just as our discussion was on what trust title means. As the Attorney General used it in his *Choctaw* opinion, I believe it was, it is, I believe, the general rule in determining the authority of a "local government."

Local is really State or its equivalent to the State. The powers of a county, the powers of a municipality, are derived from the State. They are delegated powers. The State has its powers by virtue of its sovereignty and that power is all encompassing. It includes zoning, police powers, tax, the whole thing.

Congressman MEEDS. So you are talking about in effect the powers of the State. When you say local——

Mr. TAYLOR. Equating them with that, that is correct.

Congressman MEEDS. So that would include the power to tax both Indians and non-Indians, the power on reservation lands, fee land or trust land, to zone, the power to provide police and fire protection, the power to regulate under the police power. You are suggesting that we adopt a general statement of purpose that Indian tribes have all of those powers on reservations?

Mr. TAYLOR. That's correct.

Congressman MEEDS. Even though you know that under the present state of the law, they do not.

Mr. TAYLOR. That they are not exercising those powers?

Congressman MEEDS. Well, there are even court interpretations which indicate they do not.

The whole question of zoning, for instance, is up in the air. The whole question of taxation is up in the air.

Mr. TAYLOR. Well it gets to what Commissioner Borbridge said though. There haven't been any judicial decisions saying that the tribes do not have power yet. And, you know, it's a question of when and whether the Federal court will recognize it.

Congressman MEEDS. And if we adopt this general principle, we will say that Indian tribes do have the power to tax, have the power to zone, have the power to adopt all regulations necessary for administering the police authority on reservation.

Mr. TAYLOR. I think, Congressman, in order—I would like to keep the discussion at this point, and I understand exactly what you are saying, within the context of reservations that are—let's say, semiclosed.

In fact, the Menominee situation, where you have 2,300 Indians within the reservation and 300 non-Indians. It seems to me that that is an excellent example to be framing our discussion in terms of.

I realize there are significant problems where we get to reservations where little land base is left and perhaps what we need to be talking about there are limitations of the geographic application of those rules.

I see Paul shaking his head——

Congressman MEEDS. I'm doing the same thing.

Mr. TAYLOR. I'm not conceding the point. I am saying the discussion will lead us.

Commissioner BORBRIDGE. Mr. Chairman, if I might comment, please.

I think this is where I have some problems as a layman. I will have to give this a lot of thought because, on the one hand, I start with what I call my starting point and that is I perceive as a Commissioner that what we are dealing with is inherent tribal sovereignty. I think history relates quite accurately and quite graphically that there has been an erosion of that sovereignty and I might add that it has occurred at the instance of a—call it a stronger, more powerful Government.

I don't think there has been a willful, happy giving up of that power by the sovereign which in this instance is the tribal governing body.

Right now, we agree that we are not sure which of these many sovereign rights, which I call the inherent rights that a sovereign tribe, still has. They still might be a part of the powers that the tribes may exercise. We need to be very careful when we say that the Federal Government, the Congress, should confer upon the sovereign tribal governments, the right to do certain things, because then I question whether such a starting point is correct.

The tribal governing body had sovereignty as an inherent right. It seems to me then that it had the right to do these things, and if the Congress acts, the Congress acts as to clarify the fact that these rights do exist and perhaps may be exercised for the first time in some instances. Part of my layman's perception here is that when litigation arises, it generally arises because the tribe is exercising its specific power as a sovereign. Litigation, as very often does legislation, tends to restrict the exercise of that power, by magnifying it.

This is just a layman trying to work his way out.

Mr. TAYLOR. I think your discussion rises above a layman's discussion, Commissioner Borbridge. I would agree fully.

Congressman MEEDS. Lawyers like laymen's discussions.

Mr. TAYLOR. I would agree fully with what you just said and by this paragraph, I don't think. we are not proposing that that grant powers to the tribe, but rather it is a recognition of powers. It is a doctrine virtually founded in international law and that's where the Federal-Indian law comes out of—these principles of international law.

I think recognition of these principles would help much thinking of many people, Congress and Federal administrators and State people, you know, if that perception were more clear. But we are only talking here about recognition and this rule down here that in any conflict where a question of a power of a tribe is drawn, in issue that the burden would be on the person questioning the tribal power to show where it was taken away. That is a restatement of the position enunciated in court decisions and in Felix Cohen's work at page 121.

Mr. BORBRIDGE. Mr. Chairman, I might say the attorneys are back in my good graces.

Chairman ABOUREZK. It doesn't take much to keep him happy, I guess.

Congressman MEEDS. Well, if we adopt at least the second portion of that, however, we are settling the question of what powers, essentially what powers, what sticks are in the bundle called sovereignty for Indian tribes.

And then, we will include similar powers which states that.

Mr. ALEXANDER. That is exactly right.

Congressman MEEDS. So that there will be the power to take criminal and civil jurisdiction on reservations over Indians and non-Indians and to assert all the powers that a State can assert.

Mr. TAYLOR. That's correct.

Congressman MEEDS. Now, is that the recommendation of all of you people there?

Mr. WHARTON. Subject of course to the plenary power of Congress. That is the recommendation.

Mr. TAYLOR. Mr. Meeds, I suppose the question comes up, when we get over to the jurisdiction issue where we start talking in terms of: Did the allotment and opening statutes that Congress passed at the turn of the century where the United States issued fee contents to surplus Indian land, to the opening of those reservations, to homesteading and settlement constitute a taking away of a tribal power? That's the context that the legal issues are presently framed in. It frankly hasn't been decided in the courts yet, but ultimately, certainly what we are recommending, and I think we are all in agreement on this, is that the ultimate objective of Federal Indian policy should be to put the tribes in a position where, in fact, let's say 20 years from now, we could without hesitation say that that's the rule.

Reacquisition of land base, beefing up tribal governments to the point where they really are functioning fully, which they are not right now. They have no funds; they have no tax base which virtually any government has. On the one hand, we say they are government. On the other hand, we say they don't have a single power that a government is endowed with and then we turn around and say, see, you're so inefficient and so totally dependent. Of course they are dependent. They are kept in that state.

Although, I do feel that once the issues get fully discussed, then we are all going to have to begin wondering. But, I go along with what D'Arcy McNickle said this morning. We stumbled into this thing. Dawes was a good man and led a good movement, but the Dawes Act turned out to be horribly disastrous, and, I think, what we are doing here is trying to talk about correcting some of the things that happened out of that Dawes Act.

Bringing tribes back to the point where they are, in fact, the government within the reservation and they do, in fact, have all of the powers of any local sovereign, and if we frame our discussion on this point, not in the context of those reservations that have been so completely opened up but rather in the context of the Menominee, 2,300 Indians and 300 non-Indians and those 300 non-Indians didn't go in there under the Dawes Act, I don't think.

I think they went in after termination where the tribe was so hard pressed for money and had to sell off some land.

Congressman MEEDS. Well, Peter, I'm sure that we would both agree that there are degrees of sovereignty which can be properly corrected and without impinging on any other rights which may have been acquired, rightly or wrongly. There are degrees of sovereignty which can be asserted within the general framework of sovereignty of the United States and not cause a lot of problems. And there are some by some Indian tribes. Clearly the Navajo can utilize many more sticks in the bundle than can the Agua Caliente or some tribe that was impacted by civilization and State laws and by a lot of different things. However, with this general statement we are conferring all of those powers on all of them.

The Yakimas can assert a lot more sovereignty, it seems to me, within our framework, than can the Lumbee because the Yakimas are not impacted by some of these laws and the mistakes we may have made in the past.

But, I have a question here, too. You equate the powers of local sovereign to the powers of the State. Now, the States are subject, as someone pointed out here, to prohibitions because they gave away certain powers. They are subject to the commerce clause. They are subject to public welfare, they are subject to a lot of things which the Federal Government exercises.

Are you contending then that tribes are subject to the same prohibitions or the same grants of power that they have given to the Federal sovereign?

Mr. ALEXANDER. With respect to tribes and the States, I guess the first point is that we are not saying by the adoption of this principle that we are conferring any power and I have to return to our previous statement which is that we are recognizing the state of existing law.

With respect to States, when you want to define what powers the State of New York does not have, you have to look specifically to an act of Congress, to the constitution of the State of New York, what authority it may have delegated to New York City as opposed to other charters that it may have granted to the city of Buffalo. With respect to tribes, getting us to the second portion of principle No. 1, you have to similarly look, and because of the trust obligation of the United States, you have to find what specific delegation by the tribe has been made, or by the power of the United States; what specific thing has been removed from that tribe, and that, in fact, may vary from tribe to tribe.

Congressman MEEDS. Well, let's take an example. I see Lucy Covington sitting here. I don't think the Colville specifically gave up the right to impede the flow of the Columbia.

Are you saying that the Colville should have the right to impede the flow of the Columbia? Lucy will say that they do have; isn't that right? They are in court right now on it, I think.

Mr. WILKINSON. Well, Congressman Meeds, obviously, it's a question that came out of the blue to us. But to me, the answer is that they have as much right as the State of Washington does. The perception is that the State of Washington isn't going to go out and act unreasonably in damming the Columbia and the tribe won't either.

Congressman MEEDS. Indeed, the State of Washington has no right to impede the fall of the Columbia because of the commerce clause, because it is navigable waters. And I think, to follow your rationale of inherent sovereignty, which would include all the sovereignty that was not specifically given up, it would allow the Colville to impede the flow of the Columbia; I would suggest they still have that right under your theory.

Mr. WILKINSON. No, because Indian tribes are specifically mentioned in the commerce clause. The Congress shall have power to regulate commerce among the States, foreign nations and Indian tribes. Therefore, the tribes are in the same position as Washington and they are subject to superior congressional power also.

Mr. ALEXANDER. Which gets us to the second part of the statement. There is a specific section that was just referred to where the United States via its power has acted.

Congressman MEEDS. How do you mean has already impeded the flow of the Columbia?

Mr. ALEXANDER. No, but has taken the authority to act in that area and it may take specific court determination and I am not familiar with that particular situation, but it may well take court decisions to shake out what the specifics are in each individual situation. But clearly in the case that you present under the commerce clause, the United States has assigned to itself power in this area.

Chairman ABOUREZK. I think this is a good point to break off. We are a little bit over.

We will recess until 10 o'clock tomorrow morning. Thank you all.

[Whereupon the meeting was adjourned at 4:45 p.m., to reconvene at 10 a.m., on Saturday, November 20, 1976.]

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

SATURDAY, NOVEMBER 20, 1976

WASHINGTON, D.C.

Present: Senator James Abourezk, chairman, Congressman Lloyd Meeds, vice chairman, Senator Lee Metcalf, Commissioners Ada Deer, John Borbridge, Adolph L. Dial, Louis R. Bruce, and Jake Whitecrow.

Staff: Mr. Ernie Stevens, staff director, Ms. Ernie Ducheneaux, administrative assistant.

Staff members: Paul Alexander, Peter Taylor, Ray Goetting, Donald Wharton, Charles Wilkinson, Patricia Zell, and Chuck Peone.

Chairman ABOUREZK. The Policy Review Commission will resume its session.

I've got a couple of announcements to make before we start and that concerns getting in and out of the building today. It's Saturday. The building closes at 1 o'clock. For those people who are going to leave and come back in after 1 o'clock today, you will have to use the Independence Avenue entrance, which is one floor down and just a few steps over that way.

There will be one of the Commission—I'm sorry, the other way—one of the Commission staff people down there identifying people who do not have ID cards to get into the building. So, if you come back in after 1 o'clock, that is the only door you can get in.

The cafeteria in the Longworth Building is open today but it closes at 1:30. Yes; it will close at 1:30. We'll break here about noon, so that will give everybody time to eat down there.

We don't know yet whether we will resume our session tomorrow. I guess it depends more on our progress today. What we might do tomorrow, is have a 3-hour session from 10 to 1 o'clock and then just quit at 1 o'clock and start Monday morning again; so I think we can all decide later on whether we feel like coming in tomorrow. It depends on our progress today.

So, have we finished with chapter 6 yet? We're still on it.

Mr. TAYLOR. Mr. Chairman, when we concluded yesterday, I think we have reached the third sentence of the first paragraph.

Chairman ABOUREZK. Third sentence; that's good progress. How did we get clear to the third sentence?

Mr. TAYLOR. I think very clearly, we are in probably the most sensitive and the most vital area of anything that we will be discussing in tribal government.

I suppose from my own perspective, I view it as the most important thing we are discussing here this weekend: The power of tribes and tribal government, and where we are headed.

Now, we had some conversations after the hearing yesterday, and we note a rather notable lack in this paragraph.

What we are talking about here is the powers of the tribes, and it is all tribal government. There is a countertheory that I think is very important, from the Federal perspective, and that is that Congress has plenary authority over Indian tribes. It is virtually an unrestricted authority. It reaches to the point where judicial decisions have upheld the right of Congress to terminate tribes, to even go in and tear up a fee patent; a fee that was issued to, I think, all five of the civilized tribes. This is the most basic document in all of the Anglo-Saxon Law, the fee patent deed. And we simply said it didn't exist anymore and we proceeded to allot out the property and the courts have upheld that.

So, when we are talking tribal sovereignty here, we have to remember that ultimately Congress does have plenary power over this thing, and if situations start to get out of hand, it is possible always for Congress to step in on a case-by-case basis, a tribe-by-tribe basis.

So, I think it's an important thing to keep in mind as we discuss this.

Congressman MEEDS. Pete, I'm certainly aware of that. One of the reasons—perhaps the major reason that this Commission is functioning today—is to lay out some legislative guidelines so that there is some certainty, both for Indian people and non-Indians, in dealing with these questions that we are considering. If we simply say that Congress can step in later, we do nothing but continue the chaos that exists today between court decisions and a lack of policy which exists at the Federal level with regard to Indians.

So, it seems to me that this Commission has got to at least establish some guidelines as to what Federal legislative policy is with regard to tribes and to Indian people so that they can know what their rights and prerogatives are and so that other people can be on notice as to what those are.

We certainly agree that Congress has plenary authority and, in the absence of the adoption of some of these recommendations, will continue to have that authority. But, I still think that we've got to do more than exercise that authority on an ad hoc basis as problems arise.

We have all kinds of problems now and we clearly will have more in the future that we ought to lay out some legislative guidelines for——

Mr. TAYLOR. I think the difficulty, Mr. Meeds, is that we have so many different kinds of tribal governments and strengths of tribes that are involved here. We do recite that as an introductory paragraph further back in jurisdiction, which I think we will probably have to turn to.

Perhaps we can run on through these basic points—and on this third sentence in the first paragraph, I understand your reservation and your hesitation. In fact, I've got a marginal note here, "I think a decision on this sentence should be reserved until we talk about jurisdiction."

But the problems on jurisdiction in these tribes are—the Menominee situation is an excellent one, as we discussed yesterday. Twentythree hundred Indians within that reservation, 300 non-Indians. That's the kind of a situation, I think, that should govern our initial consideration at least.

Congressman MEEDS. And also, a reservation that covers a county. The county borders are coterminous with the reservation borders.

Mr. TAYLOR. Which is not always the case of course. The Navajo traverses three States.

Congressman MEEDS. So you've got some obvious advantages to the exercise of more of the powers of government with the Menominee than you have with a lot of others and the same with the Navajo.

Chairman ABOUREZK. Was that Menominee that was your example?

Mr. TAYLOR. Yes.

Chairman ABOUREZK. There is another example that I want to raise too and see if I can get some discussion going on it.

In South Dakota the Rosebud Reservation now encompasses Todd County. Are you familiar with the area out there?

Mr. TAYLOR. Vaguely.

Chairman ABOUREZK. Todd County is the Rosebud Reservation. It's majority Indian population. What used to be an addition to the expanded parts of Rosebud Reservation, encompasses Milette County, which is probably majority Indian but not overwhelmingly Indian, maybe. I'm not even sure, but there are a lot of non-Indian people living in Milette County. Tripp County is overwhelmingly non-Indian. Gregory County and Lyman County, overwhelmingly non-Indian, in fact, Indians in those counties are distinct minorities as opposed to Todd County.

Now a legal defense lawyer for the Indians at Rosebud brought a lawsuit a few years back, claiming that the original boundaries of the Rosebud Reservation were illegally diminished and, you know, putting aside what happened on the sale of the land and how it got into the hands of non-Indians, 50, 60 years ago. The fact today is that four county case and the issue is, will they be included in the Rosebud Reservation boundaries?

In terms of talking about sovereignty, should it be the policy of the Congress to restore sovereignty to places where the Indians do not live anymore, but which at one time, were a part of the original reservation.

I would like to hear some comment on that.

Mr. ALEXANDER. Well, task force 4's report in recommendations in that area, tend to deal with land requisition and land consolidation as a functional, jurisdictional base, regardless of the way the particular diminishment case would go on the basis of the treaties, and language of specific statutes that opened up the Rosebud Reservation suit.

The functional has to do, in the view of that task force at least, with the requisition and the consolidation of the land base. But, the additional point on that in that task force recommendation, is that this is something that should be worked out with a mechanism established by Congress between the parties in the area.

There are perhaps positions that can be reached on what should be, for functional tribal purposes, reservation boundaries. But to discuss it in total abstractions—not total abstractions, I'll withdraw from that—but in broad generalizations where the *Rosebud* case is different from the *Sisseton* case and is different from each and every reservation throughout the Dakotas, changes drastically when you hit the southwest and the northwest. It almost requires, almost, a case-by-case deliberation.

The important point that we try to emphasize throughout the tribal government section is what the tribe has, if it is ever to come to the negotiating table with the county or a State, to define how they should cooperate on law enforcement, or who should do what and how they should work out tax agreements as tribes in South Dakota have in fact done.

The tribe has such basic governmental powers, that it needs to come to the bargaining table with. Otherwise, it has no position at all within the negotiation framework.

Mr. WHARTON. There is at least one other position I feel obliged to report to you, which I'm sure you are aware, but for the purposes of the record, the treaty councils, especially in South Dakota, take the position that the only boundaries which are appropriate boundaries, are the treaty boundaries and that anything less than that is an illegal act of colonization under the United Nations Charter.

I report that to you as part of the testimony that we have taken in treaty country.

Chairman ABOUREZK. All right.

Now, as a practical matter, and I guess what I am trying to explore with you is some workable alternative to what I see coming as a big problem out there.

Mr. WHARTON. I think that specifically does—excuse me.

Chairman ABOUREZK. If the Supreme Court comes down and says the original boundaries are within the four counties, well, there are almost no Indian people living in those four counties and that means that the tribe out of Rosebud is governing an area that for them, is practically ungovernable.

Mr. WHARTON. I guess, Senator, that the response to that, is that I expect that the Rosebud Sioux Tribe will act responsibly. They probably don't want to govern four counties because they probably don't have the equipment or the administrative ability to do so.

Chairman ABOUREZK. I'm not worried about the tribe. That's not my problem. I'm afraid there is going to be a war, not started by the tribe, but what I am leading up to is to follow Mr. Alexander's point, that if the tribe by a Supreme Court determination is determined to have jurisdiction of the four counties, when they come to sit down with the State of South Dakota or those three counties over which they probably do not want to have jurisdiction, they've got something to bargain with.

They can sit down then, and say, neither one of us really want Indian jurisdiction over those three counties, but what we do want as the Rosebud Sioux Tribe, and I am obviously conjecturing at this point and not speaking for them at all, is some sort of solid land base and jurisdictional base from which we can function.

Chairman ABOUREZK. They have that, you know.

Mr. WHARTON. They do have that.

Chairman ABOUREZK. The tribe really does exercise pretty much complete control over the reservation area within Todd County.

Mr. WHARTON. I guess the thing is that they work on some sort of agreement with the involvement of the Federal Government to redraw some treaty boundaries and to redraw reservation boundaries consistent with the needs of all the people involved.

Chairman ABOUREZK. That sounds all well and good, but I don't have to tell you what the passions are in a place like that and in the northwest and so on.

See, what I'm afraid of is, I'm not worried about the tribe itself, because I've talked to the tribal people out there and they are more or less willing to work something out, because they know, they realize that so far as they are concerned it's ungovernable. They can't afford to cover four counties. They don't really know what to do with them.

But, what I'm afraid of is, that the reaction of the non-Indians might get the tribe's back up, and you are going to have a confrontation where one might be able to avoid it. I don't know how to do it, and that's just what I'm kind of asking.

I mean, your theory is fine, but I need something more practical to talk about I guess.

Congressman MEEDS. Mr. Chairman, may I suggest at least a framework in which we can begin to work to offer a solution to that problem? That is the suggestion for legislation, which will so define a reservation so as to prevent the very thing about which you are talking.

Now, I know this is no easy matter. But, it seems to me, that it is clear that this country is not going to stand for the Sioux administering and governing the boundaries of the original Sioux treaty of 1862–1851, maybe. We have to define or recommend to the Congress that reservations be so defined as to prevent the very kind of conflict about which you and I both know. I think most reasonable people in this Nation would not like a definition or a court interpretation of reservation, which leaves Indians and Indian tribes in a position where they are governing large amounts of geography or large amounts of land in which they are not predominantly inhabited by Indians.

Under some of the interpretations that might be given, we would have in our area Indians administering the City of Tacoma. Now, we've got to be realistic. This simply is not going to happen, and it seems to me that we have an obligation here to so define or at least lay forth the guidelines for definitions of reservations, which would prevent that kind of obvious conflict.

Chairman ABOUREZK. Well, I guess what I'm looking for, and it seems like Lloyd is looking for the same thing, and perhaps you might want to discuss and provide some sort of guidelines in your discussion of what several alternatives might be undertaken in instances like this, where in effect, new facts have been created through the fault of nobody living today.

And, it might help as some sort of approach to it or a policy that might be adopted.

Mr. WHARTON. I feel the need to respond briefly to that because I think it is an extremely important point, and I think if I understand the position that you are outlining, Congressman Meeds, what we are talking about effectively is the abrogation of Indian jurisdiction over a large geographic area, predominantly inhabited by non-Indian people.

And while I understand the practical and the emotional justification for that, I feel like it is not legally and morally appropriate to take that kind of position from the congressional point of view.

Chairman ABOUREZK. Take what kind of a position?

Mr. WHARTON. That jurisdiction be abrogated by Congress. I do think there is a middle ground, and that middle ground is to set up processes by which those sovereigns can sit down and negotiate something that is mutually acceptable to both of them.

Mr. ALEXANDER. To take the Tacoma situation, it seems that if we go back to D'Arcy McNickle's historical piece that everything the non-Indian community—(and take Senator Abourezk's point—that it is not the Indian community that he is particularly worried about in that particular situation)—is angry at the Indian community or wishes something that the Indian community possess by a right, it is the Indian community that ends up losing; that the solution is to only focus on taking away something the Indian community may in fact, win in court cases, based on the existing legal documents. And, what we end up with is one side raising a stink and the other side receiving nothing functionally.

What we have suggested in task force 4 is a process that perhaps what is appropriate, is for the City of Tacoma and the tribe to sit down and determine perhaps if there is not a unified alternative land base that that tribe could have that would provide for its economic future and the hopes and aspirations of its people, and then to come back to Congress with that.

But, if each case is so different, each factual situation, then a solution across the board to remove jurisdiction by an act of Congress from Indian tribes where such exists in the law, can't ignore the distinctions and variations between the tribes.

What we recommend is a negotiation process with Federal support, with requisition of land bases, with tradeoffs, if that is what the tribe is willing to do, and if that is what the individual non-Indian community is willing to do. There is a substantial showing as the hearings record across this country from non-Indians, beyond the emotionalism, of being willing to leave those reservation areas and sell out.

The Standing Rock Sioux have offers to buy back 50,000 acres within their reservation area. Even in the northwest, from some of the most vocal opponents to future problems that they perceive, may come with tribal governments. This statement is that the Federal Government is to blame; that the Federal Government is the entity that misled the tribes and misled the non-Indians coming into reservation areas, and if there was an equitable way for them to be bought out, to have exchanges of land, that some of those non-Indian persons would be willing to adopt that kind of reasonable position.

Chairman ABOUREZK. I think that works in a place where there is a majority of Indian population, but I don't know that it would work so well, Paul, in a place where there is a very extreme minority of Indian population; and there are hundreds of thousands of acres of very expensive land that you have to find money to buy.

Mr. TAYLOR. Mr. Chairman, we intend to address this in the jurisdiction section and we have a paragraph that I think is pretty important.

The operating assumption of the Federal Government, I think, through our history, has been the non-Indian community, the non-Indian States and counties, will act responsibly and fairly toward Indian people as well as all others. We have a 200-year history now that shows that this is not the case. It's time to turn the table over and operate off of an assumption, until it is proven otherwise, that the Indians are going to act responsibly and fairly and let's see what happens in Tacoma, Wash. I understand that there is some saber rattling out there and that the Indians say they are going to impose a tax on the city of Tacoma. It's ridiculous and that's what the plenary power is about.

If they tried it, the lifetime survival for that tribe is about 24 hours. They are terminated just like that. These people are not going to commit hara-kiri. They are not going to run out and propose laws that they know are going to so inflame the non-Indian community that they are going to wind up terminated.

I find it also, and I really feel compelled to address this, this idea that a tendency toward criminal misbehavior of non-Indians is a cause to reduce the Indian reservation; this idea is abhorrent. That's the history of this country. That's what *Worcester* v. *Georgia* was all about and everybody in the establishment knew that the frontiersmen in Kentucky were stirring that thing up.

We removed those tribes to the West because we couldn't spend enough money to raise an army to defend the treaties that we had entered into with those people. That's how the Black Hills were lost. Gold was discovered there and we didn't have enough troops out there to protect the Black Hills, so we finally threw up our hands and said, "Well by God, we'll turn it around. We'll take the Black Hills away from the Sioux. We'll let the miners have it."

I understand that's where William Randolph Hearst's first fortune came from, was out of that. Then we did it in Oklahoma——

Chairman ABOUREZK. The Federal Government got $1½ million of that back yesterday.

Mr. TAYLOR. And I'm so emotional about this issue and this argument that I think I better stop while I'm ahead.

Commissioner BRUCE. You guys are beginning to make some sense now. You're turning around and saying, "We're not the bad guys, that we are capable."

That's the best thing you've said so far. Now if we're not going to make legislative recommendations, what do we say about the present interference as a result of congressional authority that allows these people, the FBI people, to come in on reservations and do all these things?

Don't we need to draft some kind of legislation that prevents them from doing these things? You know, and we talk about Tacoma. What's wrong with Indians running Tacoma? I'm all for it. I think we've got to change this around. All of our lives we've been incompetent to this very day.

You know, I don't even sign—I use this as a favorite—I don't even sign my lease. I don't know what's in the lease for my allotment at Pine Ridge. I don't sign it. The tenant signs it. Are we going on forever with this kind of thing, saying to me even, maybe I'm not—you're not competent, you know, so we have to take care of this and we have got to change that thing around. We are competent and we're proving that we're competent to do these things.

So, let's not get bogged down with blaming us for all the things that you know are bad.

Chairman ABOUREZK. Lou, I hope you didn't misunderstand. I didn't blame the Indians for everything that was bad.

Commissioner BRUCE. I don't want those guys to get on that.

Chairman ABOUREZK. What I was looking for was a practical way out of what I foresee as a very immense political problem shaping up out there.

Mr. TAYLOR. And I agree that we have to find it, but the concept that the answer lies in reducing the reservation boundaries is such an anathema—well, you saw the way I reacted.

Chairman ABOUREZK. But I mean in defacto, those boundaries have been reduced over the last, I guess, 75 years, something like that.

Mr. TAYLOR. There has been a great influx of non-Indian population.

Chairman ABOUREZK. Under the color of law. Now, it might have been illegal, but it was under the color of law; those people have been misled by the Federal Government, there is no question about it.

Mr. TAYLOR. And I think the important thing is that the Rosebud Sioux Tribe, as you indicated they are willing to do, needs to sit down with the non-Indian community. I don't believe that that tribe wants to exercise powers over all four counties. They can't do it. By the same token, the State can't exercise jurisdiction over the Rosebud Reservation. They tried it at one time, the State of South Dakota had that jurisdiction, and they ceded it back to the United States because they couldn't do it.

The tribes and the local county government should sit down and work with each other. Congressman Meeds, at lunch yesterday, there was some discussion about sort of primary authority and secondary authority. Within Todd County, the tribe would want to have primary authority, whether the person is Indian or non-Indian.

Outside Todd County, perhaps the State ought to have primary authority. Primary implies a secondary authority, too. Now, I think the Rosebud Tribe would like to have jurisdiction over their own members for crimes they commit within that four-county area; for divorce, for custody of children, like the DeCoteau case, civil complaints, and contracts among their members.

The conception is that the need is for the tribes and the States to sit down and start talking to each other. I think that is vitally important.

Don Wharton and I had a conversation with some of the International Game people. I don't know their full correct title, but that's essentially the thrust of what we talked about with them, that this fishing controversy out there in the Northwest is not an unresolvable thing. It doesn't have to be resolved through condemnation of the Indian fishing rights.

It can be resolved by responsible State action and responsible tribal action. There are burdens on tribes here too, and we have to recognize that; but we have to seek solutions that will accommodate these problems you are talking about. They are very real.

Chairman ABOUREZK. Senator Hatfield and I went and held hearings in the Northwest recently. Senator Hatfield came up with what I thought was a fair, workable solution.

It's kind of similar to the Hopi/Navajo Commission that was set up to provide for negotiations between the two various factions and there was some way to work out what the ultimate solution of that problem will be.

Now we did the hearings too late in the year to introduce legislation, but I understand Senator Hatfield is drafting—at any rate, Tom is getting it ready and he will drop it in next year and I think he'll have cosponsorship for many of the people up in that Northwest territory. I don't know if Lloyd has been in all that yet.

In other words, I asked every witness, Indian and non-Indian, what they thought |about that and the overwhelming majority of both sides thought it was a good idea. So, you're right, they're reached the point where they can do that, but I don't think that point has yet been reached in South Dakota, primarily because everybody is waiting for the Supreme Court decision to come down, and my only hope is that it's not too late after the decision comes down to be able to work out something like that.

It should be done before everybody gets their backs up. Another question, and I'm going to raise this question about the FBI being in on the Indian reservations.

Have you addressed anywhere in this section or any other sections, the notion that the FBI ought to be gotten the hell off the reservations and perhaps have some other investigation agency operating there instead of the FBI?

Mr. ALEXANDER. Yes; we have.

Mr. WHARTON. Yes, sir; we have.

Commissioner WHITECROW. Mr. Chairman, before we get into that, may I comment on some of the items that we have been talking about here?

Chairman ABOUREZK. Yes.

Commissioner WHITECROW. Thank you, sir. I would like to approach this particular aspect of reducing the jurisdiction boundaries, geographic boundaries of a tribe from this standpoint. Every place that I've been in these past 5 to 10 years, I hear comments from American people all over the Nation saying something should be done about the Indian problem.

The Congress of the United States should do something about it. They look upon the Indian situation in the United States as a black mark upon our Nation, a black mark upon the honor of our Nation.

I would like to call to our attention a comment that was written from Secretary of War Knox to the President of the United States on July 7, 1789, at which particular time they were discussing the situation of the Indians in the Southeast part of the United States.

They wanted to do something about the Indian problem down in the Southeast corner of the United States. They wanted to relocate them and they are fortunate to be alive, even today. But, the Federal Government, at that particular time, through the Secretary of War proposed the following:

Missionaries of excellent moral character should be appointed to reside in their nation; who should be well supplied with all of the implements of husbandry and the necessary stock for a farm.

These men should be made the instruments to work on the Indians, presents should commonly pass through their hands or by their recommendations. They should, in no degree, be concerned with trade or the purchase of lands to rouse the jealousy of the Indians.

They should be made their friends and fathers. Such a plan, although it might not fully affect the civilization on the Indians, would most probably be attended with the statutory effect of attaching them to the interests of the United States.

It is particularly important that something of this nature should be attempted with the southern nations of Indians whose current situation might render them proper subjects for the experiment. The expense of such a conciliatory system may be considered as a sufficient reason for rejecting it, but when this shall be compared with the system of coercion, it should be found the highest economy to adopt it.

After reading that and also picking up last evening's paper, I read something that is quite in correlation with this, a situation that is happening to many other of our Indian citizens in this hemisphere.

I would like to call the Commission's attention to this. In the Washington Star of last evening, there was an article headlined, "Anthropologists Charge Firms Peril Brazil Indians." I would like to read this anthropologist and those academic types who spend their time prying into people's mating habits and other private business, have joined a long list of groups taking pot shots at multinational corporations.

And, a pair of anthropologists representing what they describe as the first public interest anthropology research group of the United States has issued a report saying that mining activities in the Amazon base of South America is destroying local, primitive Indian tribes. As described by the principal author, Dr. Sheldon Davis, of the Massachusetts Institute of Technology, the summarial is this:

> Mineral rights are discovered in remote jungle. Greedy, profit-lusting, multinational corporations combine with repressive military regimes to exploit the deposits. Roads are forced into remote areas and construction boomtowns spring up as mines are opened.
>
> The local Indians are conveniently eliminated by outright killing or disease or are drawn into the modern economy, such as it is in the jungle. The loss of traditional culture is a clear point of conflict between scientists and businessmen. Anthropologists develop theories of behavior by studying primitives. A developed Amazon wipes out any laboratory.

Davis' description of the intrinsic behavior pattern of U.S.-based multinational corporations is based on what he terms their "geological imperative" to continue pumping minerals and energy into the industrialized world. The chief elements in this phenomenon are large multinational minerals and energy corporations and the powerful governments and international lending and development institutions on which they depend, at private economic gain.

The remedy, both Davis and coauthor Robert Mathews talk hopefully of congressional investigations on the impact of the multinational's activities. Ideally, we would like them to leave, Mathews says.

When I read that last evening, I began taking a look at what it is we are doing as a congressional commission, looking at the relationships of our Indian tribes in the past and what is happening today in this modern world and South America.

Something quite similar to the same thing that has happened to American Indians, North American Indians, and citizens of the United States.

I think the feeling of the country is the fact that they want to obliterate this black mark against our great Nation. I really feel truly that the Indian people and non-Indian people alike would like to correct these injustices.

I think once it is pointed out that historically, the tribes still have the sovereignty, they still have the jurisdictional process, and the tribes are still governments that can govern, then I believe the American people will begin to accept this. However, I fully realize that tempers do run high. I, too, have been the victim of some of the prejudice that has been shown around the Nation, even back in the days when I personally was refused the opportunity of purchasing a bottle of beer in New Mexico, and this was quite a few years ago that this happened. But, I can tell you from a standpoint of experiencing a situation such as this, it really brings down home what it is that we are all about.

At that particular time, when that happened to me, I was a soldier in the U.S. Army, fighting for this Nation and within the Nation itself, I was refused the right of purchasing one bottle of beer in one of our States. Now, that to me is deplorable and it made me begin to wonder why is it, if I cannot be treated like other citizens in these United States, why should I fight for it.

Now I think this is a very serious thing that we're talking about, and I think the non-Indian population in and around Indian country should be made aware of what has happened in the past and I fully believe this is a congressional responsibility to do so.

I think the States and the tribal governments should, and could, through a mediation of the Congress, bring about a relationship whereby jurisdictional processes could be worked out and also, sovereignty could be worked out so that we could have a once-and-for-all correlation between tribes and State government, because that's where it's at. That's where the feelings run high, right out there in Indian country, not here in the United States Capital, but out there in the field. That's where feelings run high and that's where we have bloodshed occasionally.

That's when we have lots of black and blue marks and bruises, a lot of fights, a lot of stabbings, and a lot of discussion such as this take place out there.

I think it's our responsibility to recognize this and to work out an agreement whereby the Federal Government could be the mediator and bring about the relationship between State and tribal government.

Mr. WILKINSON. This discussion is moving toward what I think the staff sees as the absolute central crest of this report. The ultimate problem in the last 10 years is one most of you are acutely aware of in your own constituencies. It is happening all across the country. It is the fact that local non-Indian citizenries are really, to one degree or another, rebelling against Indians, and in many situations are not willing to work with them.

We see the thrust of this report to be a statement of very basic principles, such as the fact that Indian tribes are governments. Congressman Meeds, I suggest that the problem is not that the law is not clear, and I will stand behind this 100 percent. The law is clear. The problem is that the States in some cases, and I don't mean to say in all cases—

there have been some wonderful agreements worked out at the local level—but in too many situations, the States are not recognizing what the law is.

This has been a continuing pattern in the northwest litigation. Judge after judge has thrown up his hands and has criticized the States for refusing to cooperate with the tribes. Now, what we are suggesting, for example, in paragraph 1 on page 10, is not to make new law, not to take any radical steps, but to set forth a clear congressional statement in this report and then in a statute, presumably, that Indian tribes are governments.

I can't tell you the frustration I've felt at bargaining tables representing tribes in many situations across this country. The people on the other side of the table either say or act as though my client is nothing more than the Elks Club. That's not the law.

Indian tribes are more than the Elks Club, and the Supreme Court for 150 years has stuck to that principle and has done so this calendar year in two cases. And I think it is time for Congress to state that Indian tribes are governments, and state it in very clear terms.

What this will do is to allow tribes to negotiate at the local level. The Senator is concerned about the county level and that is a matter of deep concern, there is no question about that. If the counties wish to come to Congress for a solution to eliminate tribal jurisdiction, the staff suggests that those counties should come to Congress and say, "We have sat down with the tribe and negotiated and tried to work this out. We have sat there with that other government and we reached an impasse." There is no more basic point in this report.

The problem is that they are not taking those steps. They are not sitting down with the tribes. This Commission can do things to encourage that kind of negotiation at the local level, and that is where the long-term solution is needed.

The city of Tacoma may have a real problem, Congressman, I agree with you completely. But I don't believe Congress should intervene or take any action until those two governments have sat down and tried to work it out in good faith. That hasn't happened yet.

If we reach that kind of impasse, then perhaps Congress should intervene. There are suggestions, and we'll see them as we go through the staff recommendations, of different techniques to attempt to give the tribe a congressional sanction as to existing law so that they can sit down as equals at the bargaining table. There will be a proposal, for example, for Federal funding of negotiations with local agencies, and perhaps with the use of Federal mediators in some situations.

Mr. **Borbridge**. May I interrupt, Mr. Chairman, at this point, just to clarify my own thinking here?

What we are saying, essentially, is that one of the attributes of tribalism is sovereignty and that over the years, in the relationship with the Federal Government, there have been erosions of this sovereignty. We are not always able to be precise as to what characteristics of this power have been eroded other than to say they reflect the tremendous diversity in the tribes. As a consequence, some have preserved a greater degree of the attributes of sovereignty than others have.

Therefore, we are saying, that with respect to the broad spectrum of residual tribal sovereignty, that is, the sovereignty that is left, there has not been in most instances, a precise or, if you will, official or congressional determination of what specific sovereignty still resides in these various tribes.

I sense that what we are saying then, is that there should be an Indian involvement in two phases as I see it. If I read the findings and recommendations correctly, point one, there needs to be a determination specifically, almost on a tribe-by-tribe basis as to what elements of sovereignty are still retained. We are saying further—and here we come to the heart, I think, of the potential effectiveness of the Commission, that point two, as a result of these findings, we will no doubt determine through whatever means are used that there are instances in which practically unworkable situations are noted. But, we are not suggesting that the Commission go on record as advocating unworkable or unattainable solutions.

What we are saying is that when we do move into the second area of Indian involvement, the determination of tribal sovereignty, that it should not be done unilaterally. The Indians should be involved in that determination. That process has become something of a gray area in our history.

The second one, once recognizing what tribal sovereignty there is, then there is this sense of negotiation that takes place. This negotiation would proceed on a much fairer basis if there is a feeling that when the Indians sit down with whatever other sovereignty, I mean government, be it county or whatever, that if there is Congressional intent that the issues should be resolved at that level; then it would so proceed.

The thing I want to make quite clear is that I think it's quite important for the record to state that the Indians are not seeking the unattainable. They are not seeking what can no longer be done. We are not talking about restoration of those areas which for all practical purposes can never be achieved again because, if we take that stance, then we're also going to sacrifice in the process some of our effectiveness and some of the workable solutions that we can achieve.

What we're suggesting is that at least we would urge that there be a sense of negotiation. This would be a reverse of the trend which has been a historical one in which the Indians have been a passive recipient of whatever has been determined unilaterally by the Federal Government.

I'm giving my understanding of this——

Mr. WILKINSON. I notice the Commissioner no longer dares to begin his statements with disclaimers of being just a layman. Yes, you did clarify what I was attempting to say, yes.

Congressman MEEDS. I would just say, Charlie, you started out by saying that there is no dispute, or the law is clear, or something to that effect.

You know, I just can't agree with that. You ask about the FBI agency on the Rosebud Sioux Reservation, while the Federal Government has reserved jurisdiction for the 10 major crimes on reservations, and the FBI is the instrumentality, whether you agree or disagree. And, I am not any great friend of the FBI, whether you agree or disagree.

That jurisdiction has been reserved. The Indians have not tried to assert, nor do I think anybody is really seriously asserting that the

Indians have a right to govern the city of Tacoma—the situation is that you have some court decisions over here which have interpreted treaties, and which have given legal rights to Indians which they have never asserted, and that's the law you're talking about.

And, had they tried to assert it 20 years ago, we'd have the conflict that we're going to have in 2 and 3 and 4 years from now, a conflict between cultures and a conflict between tribes and non-Indians.

If this Commission goes on record as enlarging the jurisdiction as it actually exists today, we're going to have trouble and Indian tribes and Indian people are going to have trouble and they are going to end up in a much worse position than they are today, as I see it.

And, I think this Commission has to come forward with some responsible suggestions and definitions of reservations which do not lead them into that trouble.

Mr. WILKINSON. Well, and I know we understand each other in this, I'm not saying that the law is clear in all situations. I am saying that there is a tragic lack of recognition of the law by many non-Indian interests across the country, and I mean the word tragic. There are gray areas, but the law is not as unclear as many would have it. And I think it would be very good if Congress were to state some of these basic principles. In the area of expanding jurisdiction, Congressman, we will see as we go along that there are precious few areas in which there is any attempt to expand jurisdiction in the staff recommendations; very, very few.

The approach is mainly to clarify the present situations.

Congressman MEEDS. Well——

Mr. WHITECROW. Will the gentleman yield?

Congressman MEEDS. Go right ahead.

Mr. WHITECROW. Thank you, sir.

I would like to point out this: Charlie, I notice your comment that the law is clear and then I begin to wonder whether or not it is clear or not. In this material that I received from the Commission, which was Mr. Meed's—I believe you chaired this meeting with the tax administrators of the Western States.

A lady by the name of Mary Ellen Macaffree, State of Washington—I believe this really clarifies the situation that the law is not clear. In their testimony that was submitted to the Commission on the second page, I would like to point this out to our Commissioners.

First of all, before I read this short paragraph, I would like to point this aspect of it out. As I begin reading this testimony, I began realizing that these tax administrators are certainly competent people. They were knowledgeable, they were much more knowledgeable than I really anticipated they would be, in regard to Indian law, because when I talk to tax administrators and tax people in the State of Oklahoma, they are completely at a loss.

As I said yesterday, Oklahoma certainly is a confused State. But, their comments here, in their testimony, they state here that as administrators of State law where there are no Federal prohibitions to State powers, we have a responsibility to try to assert State jurisdiction.

And that word try, a three-letter word try, I believe, is the catcher in this particular testimony, because they're not sure whether or not they have jurisdictional powers here.

I also find the same thing to be true in the State of Oklahoma, when it comes to legal jurisdiction. For many years, I have been trying to bring about a parimutuel horserace operation on tribal owned trust land which is contrary to State law. The only way we felt that we could get that into court was to have an Indian and a non-Indian shoot craps out there on the reservation, and I couldn't even get the local sheriff to get involved in that because he was fearful of being run off and not being available or reelected in the coming election. He just didn't want to have anything to do with it at all.

So, that's why I say Oklahoma certainly is a confused State and I was informed that if I proceeded, that the Federal Government would process and prosecute me if I brought this about.

So, I put it on the shelf. Hopefully, after this is all over, we still might have a parimutuel horseracetrack in Oklahoma.

Mr. ALEXANDER. Commissioner Whitecrow, that example you read is a classic example of a State not recognizing what its relationship to an Indian tribe is.

States may be given, by the Federal Government through Congress, affirmative grants of jurisdiction to do something. That's the nature of Public Law 280 and all the Supreme Court decisions around it. In the absence of an affirmative grant, the State has no power with respect to an Indian reservation; so what a tax administrator should be looking for is an affirmative grant, not to see if there is a prohibition against anything he or she can do.

Mr. WILKINSON. I think it is particularly appropriate to point it out here, because this is a paper that is very helpful to the Commission. I think it's a very fine paper and one that the Commission should consider and look at. And, it lays out——

Chairman ABOUREZK. Which paper is that, Charlie?

Mr. WILKINSON. I believe it is submitted by the western tax administrators. It sets out the States' position in, I think, a very responsible way, and it's something that should be considered. But, nonetheless, as Commissioner Whitecrow pointed out and as my colleague points out, they are incorrect on the most fundamental point of all. They misread precisely the point that we are asking the Commission to clarify so that this kind of misinformation will hopefully not occur in the future. I mean point No. 1 that is on page 10.

Chairman ABOUREZK. All right.

Now, we've reached a point here, I think, and I'm going to try to do this as freely or as openly as I possibly can, but what my objective is going to be is to allow as much and as full a discussion as we can within our time, constraints on every issue that is of interest to the Commissioners, and in an effort not to cut anybody off, we'll just let it go like it shouldn't be allowed to do.

But, at this point now, we are coming to where I think we are all repeating ourselves on this one issue and I think it has been fully discussed—and if I'm wrong, please correct me. What I think we ought to do now is move on and try to cover some of the other issues and get on beyond this chapter.

Mr. BORBRIDGE. Mr. Chairman, as a brief point I would like to inquire—as I understand it, we've been discussing what might be done to try to rectify through some mechanism, the erosion of tribal sovereignty and its reestablishment in some way, but I think of more immediate import, what I came to recognize there is the fact that the Congress has, not as a matter of policy in many instances, stated its respect for, if you will, and recognition of specific tribal sovereignty and the policy lack in recognizing such sovereignty, is today resulting in further erosion of tribal rights—is this accurate?

In other words, what I'm pointing to is that all of these problems that are causing losses to the Indian tribes are not going to be solved or even result in some negotiation unless we move on this issue now and unless the Congress does, as a matter of fact, establish such a policy.

These losses of undetermined and very extensive damage are continuing and the fact is, that this is not going to go away simply as though it were something that occured in the past. This erosion is occurring today and there is the pressing need for such a policy; is that correct?

Mr. WILKINSON. Well, there have been few erosions of tribal sovereignty by Congress since——

Mr. BORBRIDGE. Are there any occurring nowadays if we don't establish a policy? I want to challenge you to respond specifically.

Mr. WILKINSON. I want to say, as a general principle, that the greatness of congressional policy during this decade has been that, although there have been erosions, on the whole, the thrust of congressional legislation has clearly been to support tribal authority and tribal government. My colleague may have a modification of this, but in my judgment the last major limitation on tribal sovereignty was in 1968 with the passage of the Indian Civil Rights Act.

So again, what we would be suggesting is not an extension of sovereignty, but a clarification of tribal sovereignty in a couple of unclear areas in order to prevent the future erosion that you are speaking of.

Mr. BORBRIDGE. I read you. Thank you.

Ms. DEER. Mr. Chairman, we are talking about tribal sovereignty and tribal jurisdiction, and my tribe, the Menominee tribe, has been mentioned several times.

I would like to read the article on jurisdiction that is contained in our constitution, that the tribes just voted on.

The governmental powers of the Menominee Tribe of Wisconsin, a federally recognized sovereign Indian tribe shall, consistent with applicable dual law, extend to all persons and subjects, to all lands and other property, including natural resources and all waters and airspace within the exterior boundaries of the Menominee Indian Reservation, including any land which may hereafter be added to the reservation under any law of the United States; the governmental powers of the Menominee Tribe shall consist of what applicable Federal law also extends outside the exterior boundaries of the reservation to any persons, subjects or real property, which are or may hereafter be included within the jurisdiction of the tribe under any law of the United States or of the tribe.

This expresses the direction that our tribe wishes to go as we proceed with the restoration process that there are islands of private land in the reservation, both Indian and non-Indian, and we are in the process of setting up our court system and setting up a whole new government under this constitution. And, once it's approved, and I would like to state that I think some of the non-Indians there may be more—may be willing to submit to the authority of the tribal courts than I think we are assuming that everyone will not wish to participate or to be subject to the tribal courts and that I think that this is understood.

We may see some different results. I would like to also state that the FBI has been on our reservation, and I know that this is a very emotional issue, but I feel I just have to state this.

I don't think they learned a thing from their experiences out in Pine Ridge. There has been a lot of mismanagement. They've missed catching people, and it was my feeling that if we had the power and authority, we could have gone—by "we," I mean the tribe. We could have handled the situation and I think the application here is that we need to think about the Assimilated Crimes Act and Major Crimes Act.

My point in stating this, is that I think there needs to be consideration for a flexible mechanism that tribes can utilize; that the tribes defer, and that as it is now, there is very little choice and that I think in setting a new policy, this should be the flexible mechanism that tribes can sit down with the states and with the Federal Government and work out some of these things to avoid some of the confrontation and some of the other problems that we have all experienced.

And, in our area we are setting aside trouble moneys to acquire some of this land and we hope that over a period of time some of the land that has been lost will be brought back under tribal title.

Congressman MEEDS. Mr. Chairman, I will abide the Chairman's admonition that perhaps we're going over this ground too many times. However, I feel really seriously that this is the core question that this whole Commission faces: the question of sovereignty and powers and which ones can and should be exercised by Indian tribes.

And, just very quickly, I will iterate my understanding of that second sentence of the first paragraph and ask if my understanding is correct.

With the understanding that sovereignty is the power to govern all those diverse elements which are required of governments, that sentence means to me that the question of who shall be governed, what shall be governed, where they shall be governed, how they shall be governed, is all encompassing.

It is saying that Indian tribes have the inherent right to govern everyone within their jurisdiction for all purposes. If I understand what is coming down the road, that definition of where will probably be, perhaps, former boundaries of reservations or at least that is a question for negotiation with local governments.

Also that sentence means that the power will be for all things. And I just want, for the record, to indicate to you that I think that if we were to adopt that policy, it would be totally unrealistic in keeping with the facts and that it will be totally destructive, totally destructive of both Indian tribes and Indian people in this Nation.

Mr. WILKINSON. Mr. Congressman, I just want to emphasize that I think what you say is a literal reading of this sentence. As Mr. Taylor indicated before, we fully recognize that that total sovereignty is subject to the plenary power of Congress.

In my judgment and in the judgment of my colleagues, that should have been clarified in No. 1 in exactly the manner you indicate, and will be. In other words, we are not suggesting by this statement that all of the sticks are still in the bundle.

We recognize that Congress can take those sticks out of the bundle, that some have been taken out of the bundle and we fully respect that the plenary power of Congress will be more specifically mentioned in this paragraph.

Commissioner BRUCE. May I ask a question? Repeat that again, will you Charlie? Are we backing away from something here?

Mr. WILKINSON. No, not at all. It happens that the sentence the Congressman is looking at does not have a specific reference to Congress plenary power. It should, and there are many, many references to plenary power throughout the report.

We believe that this is a fair statement of the law. But the Congressman is reading it literally and we have no objection to that, and we will make it clear that Congress does have plenary power and that tribes are not total sovereigns in the sense——

Commissioner BRUCE. Let's not overemphasize. I don't agree with that wholeheartedly, but I think we ought not try to bend over so far that we're always opening the door for something to happen to us to wipe us out and that sort of thing and that's why I want to bring this question up. I also want to go back to the statement that Congressman Meeds made that was—"we're going to have a lot of trouble down the road."

Well, we're having that trouble now. We're in that trouble now but we need to face that issue and try to improve it one way or the other, or we're really going to have a blowup and we've been in trouble.

But, if we don't make some of these changes, we will be in worse trouble. It makes a lot of difference whether you're chairman of the House Interior Committee or just a citizen like me now, as to how we're facing this. And, I don't like to get so emotionally upset, but I lived with this thing more than these guys have all my life and I want, on this Commission, to see us make these changes and to talk about them fairly; to get Indians in a position where they can negotiate with the neighboring communities.

I have seen very little of that kind of thing in my lifetime. I think also, I mentioned the FBI and all these others going on the reservation. I want to add Federal agencies, I want to add the Corp of Engineers, and there are some guys in here who fought with us on that dam in New York State and sort of kissed that goodbye and it happened in a hurry by the Corp of Engineers here, and I want to list them for the record as being the one and I not only have fought against them and not unrealistically to change some of these things and it's hopeless. I did it on my own farm and low and behold, they just came in and took it over and said, "The hell with you."

But, you know, we've got to face some of these issues. I just jotted down some things. Are we maybe going to change the interferences that we have somewhere in there and that's what I keep harping back. I don't mean just the FBI itself. We need to get back to really giving these tribal councils the authority and right to move ahead and that's why we are talking about sovereignty.

Commissioner WHITECROW. Mr. Chairman, I would like to add to what Commissioner Bruce has said here.

Some of the things that have been happening, I too have lived with the situation all of my life with the State of Oklahoma and the Federal agencies breathing down my throat all my life; and one of the things that was really enlightening to me, was the fact that when I finally discovered that if I should inherit any tribal or trust land, I would immediately become, as the Bureau calls it, a ward of the Government.

I currently don't own any land that is being held in trust, nor do I have any money in the individual money accounts of the BIA. Therefore, I'm a free agent. I'm a full-fledged citizen of these United States.

But, if I should inherit anything of this nature, I would immediately become a ward of the Government and in order for me to have control over my own property, I would have to go through the State court and prove my competency.

So, therefore, I feel under the shadow of this thing all of my life also, and I think one of the things—the argument that's been presented here, that we can have bloodshed in the event we return jurisdiction back to the tribes; one of the things that I think we need to consider is the fact that these tribes are not militant people.

They have leadership out there that are genuinely concerned about their people and they have feelings to treat their fellow man like fellow men. They have the feeling of following the Ten Commandments of Jesus Christ. They know what Mother Nature is all about. They are fine people. They are good people and the only reason that they have received this relationship insofar as any kind of militancy is concerned, is the fact that they have been driven to it and they are not really militant from that point of view.

All they want is what is right, what is legally right and what is theirs, and there is a need to face this issue as a Commission and we cannot stick our heads in the sand and act like an ostrich out here.

We do have the problems and, Mr. Meeds, I am in complete concurrence with you. I don't want to see any bloodshed either and I think we can truly bring about a relationship with this Commission that will sure enough set it down, whereby governments can sit down and negotiate these relationships and I think it is very essential to the future of our country.

Congressman MEEDS. If the gentleman will yield, since I don't think I have anyplace forecast bloodshed, I simply would indicate to you that I think that if we were to recommend this kind of broad definition of sovereignty which is inherent in this second sentence of paragraph 1, we will find congressional action which will much more severely limit tribal sovereignty than anyone in this room is prepared to accept.

I don't say it will be by bloodshed. I think it will come very cleanly and very quickly. We will, by our deliberations, have brought that about. That's what I'm saying.

Mr. WILKINSON. When you say the second sentence, do you mean third sentence?

The second sentence is that the powers of tribes flow from their own inherent sovereignty.

Congressman MEEDS. No, no. I mean the third sentence. It says "and questions relating to the powers of tribes, the rule should be the tribes have all the powers of any local sovereignty."

Mr. WILKINSON. Again, our clear position is, that it should be read in conjunction with the next sentence which does indicate that powers can be taken from the tribe and there is no question about that. I want to make that clear.

Chairman ABOUREZK. OK.

I think that pretty well exhausts this subject. So, we ought to go on to No. 2.

Is there any comment on No. 2?

Congressman MEEDS. Yes, Mr. Chairman. I have a question.

Chairman ABOUREZK. Congressman Meeds.

Congressman MEEDS. In quoting from that it says, "Indian people to form their own tribal governments in whatever form they choose."

Now, let's assume that they choose to have a form of tribal government in which the leaders are picked by inheritance and that there is no right to vote by the members of the tribe for that leader. Would that situation be proper under that terminology?

Mr. WILKINSON. That's fully permissible. The 1968 Civil Rights Act does not impose a republican form of government on the tribes. That was debated by Congress when that act was passed and yes, that would be permissible. I think that the thrust of the 1968 act was to specifically permit that, in large part because of some of the requests from the Southwest particularly.

Chairman ABOUREZK. Let me ask a further question to follow that question, Lloyd.

How will the tribe decide that that's the way they are going to have their government; will that be done by election or you know, what; will there be any basic protections for, say, a majority of the tribe that doesn't want it that way, but say somebody came along and imposed it on them one way or the other. How are you going to do that?

Mr. TAYLOR. Mr. Chairman, I don't think there is any provision in here that would safeguard a situation like that.

This is a restatement of acknowledged law. It's a restatement of the premise that was recognized in the Indian Reorganization Act of 1934. I brought with me a copy of a solicitor's opinion that was written by Nathan Margold within about 4 months after passage of the 1934 act. It is 60 pages long and I'm having 15 copies run because I would like each of the Commissioners to read this.

The title of it is "Powers of Indian Tribes." It is a very, very exhaustive analysis of the powers of Indian tribes.

Chairman ABOUREZK. You haven't answered my question that how are you going to get to the point where the tribe will say we're going to choose our leaders by inheritance?

Mr. TAYLOR. It is not up to Federal law to tell tribes how they are going to organize. The Pueblos are organized along the lines that I believe you describe. I believe some of the New York Nations have inherited chiefdoms. Now, I'm not sure of that. I'm no expert on the organization of Indian governments.

Many tribes have gone over to a constitutional system; most of the tribes of South Dakota, if not all. I don't see how they would ever get away from it and I don't really think they would want to get away from it. They have adjusted to the democratic, electorial type of concepts.

Is it the function of the law to tell tribes how they are going to organize?

Congressman MEEDS. Members of tribes, in addition to being members of that tribe, are also American citizens, and have certain constitutional guarantees.

Chairman ABOUREZK. What protection of individual rights will there be in that kind of government, if you don't have an elective system? Is there a way to protect the rights?

Mr. TAYLOR. Not through Federal law other than the 1968 Civil Rights Act. I know the 1968 Civil Rights Act is not liked by tribes but I think it's their saving grace. I constantly find myself falling back on that as a justification and I think every lawyer dealing in this business finds himself in that same position. But, anything beyond that is not really the business of the Federal Government and Congressman Meeds, to go to your point there, Indians are citizens of the United States. That is very true.

They are also citizens of their tribes and it goes back to the comment yesterday about international law. There is case law on the books, *Standing Bear* v. *Crook*, argued in around 1860, I think. It established two facts. After 4 hours of arguing by the U.S. attorney to the contrary, the judge finally rules that Indians are human beings within the meaning of the law. Incredible.

The second part was that they also had the right as citizens of their tribes to expatriate themselves. That is an international law concept. That's what has been lost in recent years. We've lost the original conception of where this body of law originated and I sincerely believe that if we go back to these fundamental points, solutions are there.

We are complicating it by the way we are trying to approach it, and if we would go back to these fundamentals, the thing will work much more expeditiously than it is working now.

Mr. ALEXANDER. To pick up on your point of how things will work, we almost seem to be dealing in a red herring situation.

I know we have had the example of Pine Ridge, which is on many people's minds, but we should not generalize from one example where a process fell down and then was picked up by the tribal people and solved.

Tribes are experimenting all over the country within their own tradition as to how to resolve conflicts between individual Indian tribal citizens and tribal governments. The Apache's talk about special committees of elders to negotiate problems out. It is not necessary that all systems and all remedies fall within classic Anglo triparte government systems.

Government is based on people's consensus as such. Tribal governments, whatever form that consensus takes, whether it be an election, be it the fact that if a chief was not acting appropriately, in years gone by, the elders of the tribes in many of the cases, the elder women of the tribe, told him and he stopped or he learned that he was no longer the chief.

There is a multiplicity of systems. No one is suggesting that we can return to a 14th century system. The tribes are governments within the 20th century context. Nobody knows how tribal governments would have developed had not this continent been colonized, but tribes have come to have the flexibility to be able to make government systems reflect their people's needs within the context of their cultures and their traditions.

And, those answers are going to come up through individual tribal cultures. The 1968 Civil Rights Act provides basic kinds of Western civilization concepts to the operations of tribal governments. The individual Indian citizen's rights under the 14th amendment in the Bill of Rights, run against State governments and run against the United States, not to the tribe.

Their rights and relations to the tribe are based upon their tribal constitution and their consensus, it can go back 3,000 to 4,000 years as in the case of the Pueblos. Those are systems that are going to have to be worked out, and people all over the Indian country are taking hard looks at those constitutions.

There are several hundred Indian lawyers that exist today. There are tribal court judges that I would hold up against any legally trained judge in the United States that are operating today. There is an evolving, growing tribal government community, and we have to see and give it the support to see how it's going to be developed.

We can't make specific generalizations on that evolving system.

Mr. WHARTON. I think there is one other important point here that has to be separated out. There are two questions involved here.

The threshold question is whether or not Indian people can choose their own form of governments and our answer on that, to that, of course, is they can.

The second question is how do you project individual members' rights, and the answer to that is, that the 1968 Civil Rights Act does that, whatever form of government they choose to govern under.

You cannot guarantee individual rights by imposing a form of government. That's not appropriate. You cannot protect the individual rights under whatever form of government they choose to govern by through the 1968 Civil Rights Act, so I think that there is a two step analysis here and that it is not necessarily one kind of thing that goes on and I think that is an important difference in analyzing this thing.

Congressman MEEDS. Mr. Chairman, would the 1968 Civil Rights Act cover the situation of a form of government in which a specific religion was dictated?

In other words, a state religion. Let's take the Pueblos. Does the 1968 Civil Rights Act impose upon the Pueblos the obligation to allow freedom of religious exercise by their members?

Mr. WILKINSON. The Civil Rights Act applies the freedom of religion protection but does not apply the bar against the establishment of religion. So the Pueblos would be permitted to have a tribally established religion. This was the reason this distinction was made in the act. But, they are bound under the Civil Rights Act to accord free exercise of religion.

Congressman MEEDS. So that only those 10 amendments which differ in some respect from the 10 amendments of the U.S. Constitution are imposed upon tribes in their organization and not the other guarantees of the Constitution.

The 14th amendment——

Mr. WILKINSON. Due process and equal protection are included in the Indian Civil Rights Act. It's not an exact application of the first 10 amendments at all. Some are picked and chosen.

For example, the right to counsel is treated differently. It is right to retain counsel. Due process is included and very importantly, equal protection is included.

Congressman MEEDS. Well, doesn't due process carry the right to have a vote and a say in the direction and the form of government?

Mr. WILKINSON. I think the legislative history of the Civil Rights Act indicates pretty clearly that the republican form of government is not included.

Now if the tribe does decide to vote, and then some due process issues may come in. But they would have the right to have a tribal government by means other than voting.

Congressman MEEDS. But, as Senator Abourezk points out, if there is no right to vote initially, as in a case where leadership is selected by inheritance and where this has always been the case, right down to the present, then a vote is rather meaningless on that question, is it not?

Mr. WILKINSON. I just have to say what a wonderful form of government the Pueblos have, and how much Congress should encourage that. If the tribe had that hereditary form of government and still has it, I think present policy would encourage that tradition. And, I hope very much this report would encourage that.

Congressman MEEDS. But do you think, and this is the basic problem I have, that this system under which we function can tolerate—and I use that word advisedly—can tolerate nonrepublican forms of government within our system. Or is this deleterious to the whole concept which we all hold so basic: The right to have a say in the management of one's affairs; a vote, whether you get your way or not is immaterial as long as you can voice your opinion. Well, it's not immaterial, but the premise is that once you had your say, you abide by the majority opinion. That is an overriding principle upon which this country has functioned for years.

Now, I don't say we can impose this on the people outside of our borders and I have often fought against those who tried to do this. But it seems to me that we must impose this obligation and give that right to everyone within our borders or we are ultimately going to be destructive of our own system. You know, there is some question about the Civil War being fought over a question somewhat like that. That situation is not totally analogous, but it is similar.

Mr. WHARTON. Congressman, I guess the thing that most immediately comes to mind are the remarks of Mr. McNickle, earlier on in this meeting and that has to do specifically with the relationship of the tribes to the government and the guarantees involved therein, in that that involves a process by which the tribes change because of their relationships and they choose to take on those accoutrements of the dominant government where they are appropriate and amenable to their form of government and do not take on those which are not consistent with their form of government.

A vote is not the only way that people have a say in their form of government.

Congressman MEEDS. Are you suggesting that we should not aveh passed the Civil Rights Act then, because people would ultimately come around to the right position? Are you saying that we should not have imposed the obligation on storeowners and bus companies and others; that the law of this land was such that it required equality and that we simply sat back and waited for it to occur?

Mr. WHARTON. Not with respect to the non-Indian governments, because we in the formation of our governments, chose to have a republican form of government. That is not the form of government which Indian tribes chose to have or have had historically. Their governments, particularly with respect to Pueblos, have functioned for thousands of years and it seems to me appropriate to their society and to their way of life.

One of the basic tenets of our government is a separation of church and state. The Indian tribes, by and large, do not choose to separate the spirit from the body and they have found that appropriate to their existence and their government and it has worked well for them.

Mr. ALEXANDER. In the various pieces of civil rights legislation which you have just referred to, the period from the late 1950's through the 1978 act, Congress required a very significant and a substantial showing as to the pattern of civil rights violations; Congress went from the general 1958 act, which essentially dealt in a very general way with the voting and the U.S. Commission on Civil Rights into more specific remedial pieces of legislation down the road, requiring specific showings of patterns and practices of abuses by private companies, by State and local governments, significant evidence was presented in these areas. Yards of litigation.

The whole history of the Voting Rights Act of 1964 and its amendments is based on, you know, enormous support and enormous legal analysis. Enormous factual analysis showing substantial, significant, nonending problems where the good faith assumptions that our country placed upon local governments were not being met and we designed and devised specific remedies.

We shifted burdens of proof. We took things out of State court. We put it in the Federal district court. We gave the Attorney General a role and so on.

There is not that pattern of evidence with respect to Indian governments——

Congressman MEEDS. I understand that.

I am in effect, disagreeing with the general statement that you simply sit back, as I understood Mr. McNickle's statement yesterday, and there are obviously degrees and we are talking in degrees. But, the general concept that brings them to work themselves out is kind of foreign to my belief; that sometimes it is necessary for a government to take actions which dictate, in effect, a course of action, rather than to simply allowing things to work themselves out.

Mr. WILKINSON. Well, I think implicit in this recommendation, Congressman Meeds, is that Congress took very substantial, and in the eyes of many Indians, extreme action of exactly this kind in 1968, and applied due process, equal protection, many bill of rights guarantees to the tribes.

There has been a mountain of litigation under that act. There have been actions against tribal governments that have been overturned.

Many others haven't been, but that act provides an extremely substantial safeguard for Indians and non-Indians alike who claim abuses by the tribal government. It is not a popular act in Indian country. It was, as I say, a very substantial action by Congress, and I think exactly the kind you are suggesting.

Mr. ALEXANDER. We are not suggesting that Congress should not act where there is a significant showing.

We are suggesting that Indian governments have been hobbled by the lack of funds, by impositions of other systems and that Indian country is trying to develop its own systems and that they need support and there well may be abuses which develop which require specific congressional action.

There is an important point that gets back to what Peter has said earlier, and what Mr. McNickle said earlier about the assumption about tribal government.

The evidence before Congress on the 1968 Civil Rights Act showed that most—and on Public Law 280, where law enforcement became a very substantial issue, the term used in congressional debates often was a hiatus in law enforcement—the evidence showed that much of the problem was due to the lack of significant resources to run the systems.

The evidence on the field hearing by Senator Ervin's subcommittee showed as much, if not more, substantial abuses in the law enforcement pattern by non-Indian government against Indian citizens in border towns. This evidence is overwhelming. There are cases, there are case studies by Federal Government institutions; but the assumption seems to be, and that is what we are challenging, that Indian governments are somehow inherently less competent than non-Indian governments. What we are saying is that assumption is not valid and that they deserve the same basic operating principles, which is that they will act fairly and competently and judiciously and that they need support.

We've talked about the 1968 Civil Rights Act and the cases arising under it. I would submit to you that the pattern of litigation under the—in 1968's Indian Civil Rights Act is substantially less than it is for non-Indian governments in terms of abuses of power.

We cannot point to one case, one single, solitary case where an Indian government has been shown to abuse the taxing power, which is a heavy, emotional issue that is raised time and time again in field hearings. We get allegations and we ask non-Indian citizens to testify in the field hearings. We never got a specific example. We never got a case. There is not a reported case and we've looked.

Mr. BRUCE. May I ask a quick question?

Is it possible that under 2 here, that you say sovereign authority of the tribes is the right of the Indian people to form their own tribal government? Does that mean that it's possible to have more than one government on a reservation?

Mr. ALEXANDER. I would submit to you the Hopi situation. They have a central government and they have delegated authority, somewhat similar to a State, to local governments to run municipal services. The Hopis have a central government in the nature of a centralized State government, they have local governmental authority. But what that term really means is that an Indian government does not have to look the same, whether it's located in South Dakota or be located in the State of Washington; that the form and focus and the function of Indian government should be allowed to vary as the local history, needs, and culture dictate.

I think Commissioner Deer's own example of the Menominee and how they drafted their constitution to take into their needs in coordination in their whole process with their local governmental officials, and a strong point of issue with the State of Wisconsin is a classic case example of an Indian government designing for their own needs.

Mr. BRUCE. What about the traditional people. You know, if I don't like the way my tribe sets up its government, can I gather together a few people and set up another one, or can I say that our tradition is thus and so on, and we want that, and that is the situation as a Commissioner I used to get into. Don't listen to this IRA group, white man's group—come down here, we're meeting down here, traditional people who are the original.

What do we do about that?

Mr. ALEXANDER. I don't think we're suggesting that tribal governments in a particular tribe split up into three or four different governments. That's suggesting that those tribal people who have a continuum of a history together and a political identity be allowed to choose the system of government that meets their needs and whatever traditional components and whatever U.S. governmental concepts.

There are many forms of government in this nation that work for different people.

Mr. BRUCE. Don't you think we ought to deal with that traditional thing; it's real?

Mr. TAYLOR. I don't want to interrupt the conversation you're having on this, Commissioner.

Yes; I believe that traditional governments could be formed. I think I have been sitting here biting my teeth waiting to get back to Mr. Meeds on the application——

Mr. WILKINSON. Anybody who can look forward to a confrontation with Congressman Meeds is a hell of a man.

Mr. DIAL. Most tribal governments: Do you consider a republican form of government?

Mr. ALEXANDER. I think there is an interesting phenomenon. Most tribal governments today are basically structured to look somewhat similar to a traditional Western European government.

Even when Congress passed the 1968 Civil Rights Act, many of the tribes pointed out that similar provisions were contained in tribal constitutions. There is divergency. The Iroquois Confederacy in New York State and going through Canada has a different form of government. The Pueblos have a different one, but most would be—would seem to be——

Mr. DIAL. Most would seem to be republican in form, that is electing officials; right?

Mr. ALEXANDER. Yes.

Mr. DIAL. But all would appear to be democratic; correct?

Mr. ALEXANDER. Limited.

Mr. DIAL. Limited democracy?

Mr. ALEXANDER. In the Pueblo situation there is a mix between a theocracy and an election system for Pueblo councilmen.

Mr. DIAL. If the people of the tribe, you know, are perfectly happy with this existing government, whatever it happens to be, let us assume it's a theocracy, isn't it somewhat a democratic form of government if they allow it to exist and if they want it to exist as such?

I'm sure you are not implying that any tribe is imposing a government on their members that the members, you know really oppose, a majority of——

Chairman ABOUREZK. Would you yield that point?

Mr. DIAL. Yes.

Chairman ABOUREZK. A more specific way that I would like to ask that same question is: Isn't it true that it is a democracy unless it's imposed by some kind of force upon the people; if they accept a theocracy, that in effect is a democracy, because it's the body of their will?

Mr. ALEXANDER. If the government rests on the consensus of the people, then it's a government of the people. Democracy is not an Indian term, necessarily. It is not necessarily an Indian term. It is our term.

Most governments and the information here is somewhat distorted, because most of it comes from anthropologists, rested on consensus. They are a consensus system.

Mr. DIAL. But it's not a white man's term. If you try to define it, you know, we can't define democracy. The minute we try to define democracy it is no longer that, so I am simply saying that we can only say that democracy has certain characteristics and that the various characteristics that we find in tribal government seems to me that if the people like it and they want it to exist, that is probably more democratic values in tribal government than we are willing to accept, maybe. Right, Pete?

Mr. TAYLOR. Commissioner Dial, I would like to respond to that. I would say that you are right, that in fact what the 1934 Reorganization Act did, and the constitutions that were drawn up under it is, induce tribes into adopting a constitution.

I'm not going to say those were imposed, so I'm going to phrase it, induce them into adopting a constitution, which put tribal chairmen in office for terms of 2 to 4 years to head this tribal council.

The significant point to me is that they put the tribal chairmen in for a fixed term of office. To me that's foreign to the way the Indian nations did it in the plains areas. I frankly would like to see those tribes—No. 1, I would like to see Interior Department advise them that there are alternative ways of organizing their government. There is a real lack of imagination in that department over there.

I think a parliamentary system would be very close and akin to the traditional way those plains Indians were organized. We were talking about it last night. Pick up AMJUR and read why we couldn't recognize tribal governments.

We couldn't recognize them because they were so damn democratic we didn't know who the leader was. People followed who they respected and when they stopped respecting him, they followed someone else. My God, that's democracy under the Acorn Tree, or something, and we couldn't live with it because we didn't know who we were negotiating with.

OK, so we've got to have somebody we can look to and say, well this guy is the leader of the tribe. He can sign papers, he can do this, but a parliamentary system is closer to the traditional. I cannot for the life of me, understand the Department of Interior, 49 years now, who haven't gone out and talked about it.

To get over to this other point, the 1968 Civil Rights Act and the Pueblos. There were 7 years of hearings under that act and yet I don't believe once the concept of how a tribe forms its government, particularly in relationship to the Pueblos, came out in those hearings.

It may have been discussed, but the act clearly was not designed to interrupt that form of government. If that was the intent of the act, then I now understand why the Pueblos want to get out from under it.

Congressman MEEDS. Peter, if I may interrupt you there. I had just a little bit to do with the 1968 Civil Rights Act and as I questioned the Pueblos about these very things, I was assured by the Pueblos that indeed they did not prevent the free exercise of religion. The Pueblo chairman knew that he wasn't telling me the truth and I knew he wasn't telling me the truth. We all knew that the Pueblos impose state religion and we all know there are instances of the Peublos running other religions off the reservations and everything else.

So I hope you don't just take the record as indicating what the fact was.

Mr. TAYLOR. I don't want to take the record, but you know, I have another feeling too, that we keep looking at Indian tribes as if before we're going to give them full recognition on this kind of thing, they've got to become model cities. They've got to become paragons of virtue. What do we do with a guy out here in Prince Georges County that six cops put 54 stitches in his head and the Department of Justice after—you lived here many years, you know what's happening in Prince Georges County, and the Department of Justice won't investigate it.

Congressman MEEDS. I've lived in Prince Georges County for several years.

Mr. TAYLOR. I won't live there. I live in Arlington.

And this FBI thing. You know, we talk about it. We're so worried about tribes and my God, there's no evidence of these abuses against the Indians. Look what the FBI did in Pine Ridge and I don't know what they're doing at Menominee right now.

I do know that one appropriate answer to it is, Senator Abourezk, what you did in the last term of office. You introduced a bill that would provide statutory guidelines for when the FBI puts on their flack jackets and get out there with helicopters. They need that. They need guidelines.

The Secretary of Interior needs guidelines on recognizing tribes. I feel sorry for the Secretary. For a radical guy, I think I'm awfully darn conservative. He does need guidelines and you are right too when you say that we need guidelines on State and tribal cooperation. We do need to come up with that. But I'm 100 percent behind Charlie when he says the first step is recognize these people as governments.

If Congress will say yes, by God, John Marshall was right and so was Thurgood Marshall, States will start to talk to tribes.

We also have to trust that the tribes are going to be responsible and this is the premise of S. 2010, the Public Law 280 thing. I've said that at conventions of small tribes. I remember when it was an NCAI convention and the question was why should NCAI support S. 2010. Some small tribes actually were opposed to that at first because they said we need State involvement with us and we don't want to take it away.

Then it became clear this wasn't forcibly removing the State, it was putting in the hands of the tribes the option to say how much they want the State involved; and once the State gets involved, if the State really screws it up, they can pull it back and say, no, we're going to do it ourselves.

These kinds of options are really vital and it really is what we're here about.

Chairman ABOUREZK. I think it's now a good time to break for lunch.

Congressman MEEDS. Could I just kind of summarize at least what I feel, however, that this section provides. It is a denial of one of the basic rights of all Americans, or a basic tenet of our constitutional form of government; that government derives its power from the consent of the governed. Paul, if you read it and literally interpret it, it means that you can have a government which is a theocracy. You can have a government which is a dictatorship; a government which is parliamentary form. Or you can have any other form that those who have the power on a reservation or within a tribe wish to impose. There is no right for those who are involved in the establishment of that government to vote for it.

Now, is that an incorrect statement?

Mr. TAYLOR. I would agree that it violates our Anglo-Saxon concepts of the way things should work, but we're also looking at the external surface of this thing.

I think probably Don and Paul are right when they say that these governments are responsive to their people and they really do rest on the consent of the people who are there.

The one comment I would make is, that from what I've seen in Pueblos, most of them are so small they could have their own 1776 if 12 guys would pick up a shotgun, you know, and if the system is not resting on consent, we would have had 12 guys pick up a shotgun. A little revolution to have their own constitution.

Congressman, I suggest that the people in Pueblos like the system that they have and the day they don't like it they will do something about it. There isn't an individual that's filed a petition with the Department of Interior to suggest preventing those things.

Congressman MEEDS. That is so reminiscent of statements that used to come out of the South, that blacks like the situation they have. So reminiscent, Pete.

Mr. ALEXANDER. But I guess the difference here is in that situation you had the white Governors and attorneys general of those States testifying.

Mr. Summer of Mississippi is probably the classic example of what we're talking about here. This comes from field hearings on the Indian people and not just tribal chairmen. People have problems with those tribal governments, nobody is denying that but when you follow up and say how do you want to resolve that and they say we want to resolve it in our tribal government, we want to build those mechanisms in our tribal governments that meet our needs.

Those Indian people were not telling us in our field hearings across the country that they wanted the Federal Government to come in and impose structures and standards on those tribes. They wanted the Federal Government to provide the support mechanisms to help them to develop the full governmental systems that met their local individual needs.

And we had complaints. We had complaints from councilmen, we had complaints from individual Indians about how a particular house was allocated and so on, but they wanted to be able to develop those mechanisms and those remedy systems through their tribes. And they suggest remedy systems that are different from those that are used by the States and that are used in the Federal system.

Some of them are innovative and some are creative. I've seen more responsible tribal government than I've seen in my own county which has a good reputation. Those tribal governments go on their local television and radio shows every Saturday morning and inform the people of what's going on and use newsletters. There is more local going on on those tribal levels, there's more creativity coming out of there today. I would rather be in Judge William Rhodes' tribal court than in most courts of the State of Maryland if I got arrested for something, because that man is fair and just, and those tribes are creating viable, evolving systems that need support and need to be different.

Mr. DIAL. I believe we will have one more statement before we go to lunch, right, Mr. Chairman?

Chairman ABOUREZK. All right.

Mr. DIAL. Paul, the Constitution of the United States guarantees the States a republican form of government, right?

Mr. ALEXANDER. The Constitution of the United States is a grant from the States to the Federal Government, delegating authorities for the Federal Government.

Mr. DIAL. OK, yes. Now, no amendment of the Constitution, the original Constitution, the original articles, no amendments—what do we have now, 25 or 26, denies tribal government or says that tribal government has to have a republican form of government, right? So, we would assume then that certain inherent rights reside within the people of the tribe to determine their own destiny in the way of government as long as it doesn't make war on the United States.

Mr. ALEXANDER. You're back to 1789 which is the—the answer is yes but there are——

Mr. DIAL. OK.

Mr. ALEXANDER. There are two minor clarification points. The tribes were not a party to the U.S. Constitution. The mention of the tribes are in that the United States took unto itself the authority to regulate Indian nations from which in this legal system stems the plenary powers doctrine.

Mr. DIAL. The whole idea though is there is nothing there to deny in fact.

Mr. ALEXANDER. No.

Mr. DIAL. OK.

Chairman ABOUREZK. We'll be in recess until 1:15.

[Whereupon the meeting was adjorned at 12:15 p.m. to reconvene at 1:15 p.m.]

AFTERNOON SESSION

Chairman ABOUREZK. The session will resume. The chamber will come to order.

I want to just inform the Commission that we are going to have to discuss on, probably, Monday a question of revising dates for additional markup sessions and maybe we will have to discuss extending the time for the submission of the report and I have asked Ernie Stevens to put some stuff together for purposes of that discussion.

We'll spend a short time on that Monday, because as more and more people are coming up and telling me that certain timetables are vital and so on and it's something we're going to have to take up and deal with. Where did we leave off?

Mr. ALEXANDER. We were on page 10, No. 2. Inherent in the authority of the tribe is the right of the Indian people to form their own tribal government in whatever form they choose.

Chairman ABOUREZK. All right.

It seems that we have gone rather thoroughly into that subject. I'd like to move onto the next one, unless there is a member of the Commission who wants to discuss that further.

Congressman MEEDS. Mr. Chairman, I won't dwell on this, but I think it's something that we certainly have to consider. We've considered the authority—the form of Indian governments. We have not discussed over whom this control and authority reaches, and I think I know the answer of the Panel. However, we should discuss it just a little bit.

If I have the basic philosophical problems with the concepts of total sovereignty and the right of tribal governments to choose forms alien to my Anglo-Saxon concepts of government over Indians, I have the same kind of problems in the assertion of those powers over non-Indians who do not have any voice in the promulgation or exercise of those powers.

Let me just give an example: the power to tax on Indian reservations. Let's use a reservation which encompassing checker boarding in which non-Indians have resided for many years and received title to their lands because of expansionistic policies by the Federal Government. The non-Indians acted, in good faith. Let's say a decision is made by the governing body of the tribe to impose taxes or for that matter to assert any of the powers of the tribe. These non-Indian people have no right to vote or participate in the decisionmaking which leads up to the decision to tax or to assert any of the other powers.

How do the task force reports or the recommendations of the Panel deal with that problem.

Mr. WILKINSON. Well, first of all, Mr. Vice Chairman, the report does recommend that Indian tribes continue to have jurisdiction over non-Indians, and in the area of taxing specifically. That recommendation will come up soon.

Congressman Meeds. In another place; perhaps we should wait then.

Mr. Alexander. About page 58 of this chapter, when we get into very specific jurisdictional issues, 58 B and C.

Chairman Abourezk. Of the same chapter; if it's in this chapter you may as well discuss it now rather than putting it off.

Mr. Wilkinson. All right. First of all, I know I am repeating myself, but it is important to repeat this. Congressman Meeds, the staff recommendations do not involve a concept of complete sovereignty, of total sovereignty. It is a limited sovereignty, as all sovereignties in practical terms are, and so we are not talking about total sovereignty.

The Congressman poses an example of taxing non-Indians. I wish to make it clear on the record that the most exhaustive series of hearings in the history of Indian affairs has uncovered, to my knowledge, no example of any claim of unfair taxation by any Indian tribe. So we are talking about a situation that has not been shown to exist.

Congressman Meeds. Before we get sidetracked, I used the tax as an example. I don't have to use that. We can say any decision which affects the lives of people who reside in an area by a body in which they have no say, no vote, no representation, and so on.

I used the tax as an example, just as a measure which would be representative of this broad area of decisionmaking without the input of those who are affected.

Mr. Wilkinson. All right. I think it is appropriate to begin by saying that those same hearings uncovered very, very few, and I think we're talking about one or two examples of non-Indians claiming abuses by tribal councils of the kind in your hypothetical.

There are concerns——

Congressman Meeds. Well, they didn't hold any hearings in northwest Washington then, I have to say that.

Mr. Wilkinson. Well there might have been various reasons.

Congressman Meeds. That's beyond the point. I'm asking a theoretical question.

Mr. Wilkinson. All right. First of all, I think there is a series of decisions by the Supreme Court of the United States that in my judgment is extremely important and hasn't been mentioned yet. I think it might be worth mentioning.

In Morton against Mancari, a 1973 decision; in Fisher against District Court, a 1976 decision; and in Moe against Confederated Tribes, a 1976 decision, the Supreme Court of the United States for the first time, I think, spoke with absolute clarity to the question of equal protection as it applied to Indian tribes.

In Morton against Mancari the Court found that a hiring preference in the BIA in favor of Indian tribes was not unconstitutional, because it wasn't based on race, it was based on a political relationship.

In the *Fisher* case an Indian was not permitted to go into State court because the situation involved a guardianship which had reservation contacts. The Court found then that Indian matters must go only to tribal court and that that's not a violation of equal protection because a tribe is a political body.

It is also established that tribes have the power to determine their own membership. Those principles taken together, along with many other statements and cases, I think, make it clear that existing law does prevent the kind of situation the Congressman is speaking of. But, I think the Congressman is going further than asking is this fair. He is asking whether it should continue. And I wish to emphasize that it is another extremely fundamental question as to whether non-Indians should somehow have the right to participate in tribal government.

The clear message from Indian country is no. The belief is unanimous, I think, that tribal governments are tribal affairs and should be limited as such.

Now, if a non-Indian claims to be in anyway disadvantaged by action of the tribal council there is an extremely sophisticated and adequate series of remedies under the Indian Civil Rights Act of 1968. And again, I emphasize because I think it's so crucial, the equal protection and due process provisions have been applied to the tribes under the Indian Civil Rights Act.

That speaks directly to questions which I suggest are hypothetical at this point, but nonetheless clearly should be inquired into, concerning discrimination on the basis of race.

The Civil Rights Act does speak specifically to that and it permits recourse to the courts. That is not an act which is favored by tribes, but it exists and does provide those kinds of remedies.

I would suggest again as a final matter, what in my judgment, is one of the four or five most basic principles that the staff has recommended to the Commission. I just think it is so terribly important and ought to be a guiding principle for congressional policy. It speaks directly to the Congressman's question. It is the very simple statement on page 56B, which could go a long way to determining how Congress is going to deal with Indian affairs in the future.

This is the finding that staff recommends the Commission endorse that I believe is most directly relevant: "Federal policy concerning tribal sovereignty must be premised on the assumption that when confronted with options the Indian people will act intelligently, responsibly and fairly when exercising powers of self-government."

There has been no showing that tribes are acting otherwise. Congress so often only acts when there is a substantial showing and where there is a serious situation involved. There has been no such showing here that the tribes are acting otherwise. It just seems to me that recognizing the fundamental principle that has just been suggested—that tribes act fairly—is not only an appropriate way for Congress to act but is based on emperical evidence that has been discovered in the field.

Congressman MEEDS. Are you aware of any cases that have been brought in any courts in which non-Indians have alleged a violation of the equal protection provision of the Constitution because they did not have representation or an input of some kind in the decision-making process in tribal bodies which regulate them?

Are you aware of any cases involving that basis?

Mr. TAYLOR. Congressman Meeds, there is total silence from this table, which I can only interpret is that all three of us answer no, we are not aware of any.

Mr. WILKINSON. I'm not aware of one. I am aware of cases brought up in the act by non-Indians but not on the point you suggest.

Congressman MEEDS. You are aware of the case of *Baker* v. *Carr* which the U.S. Supreme Court held, in effect, that due process included not only the right to have representation, but that representation had to be based on a proportion of the population of which was meaningful?

That is to say equal protection meant equal input in the selection of those who represent the Government.

Mr. WILKINSON. Yes; and that dealt with the republican government clause, I believe, which is not involved here.

Congressman MEEDS. Well, I think it dealt also with the equal protection clause.

Mr. WILKINSON. Yes; it did.

Mr. TAYLOR. Also, Mr. Meeds, it dealt with State compliance with their own constitutional requirements and *Baker* v. *Carr* was limited to one man, one vote in the House of Representatives. There was a second case 1 year later that extended that doctrine to the Senate in the State Governments.

I can't recall the name of that second case. It's my personal opinion and it always has been that the Supreme Court rewrote the history of this country in that decision. I think they were absolutely wrong in that second case, but in *Baker* v. *Carr* they finally said, after I think 40 years of efforts, to get reapportionment cases into the Federal courts, they finally said, well, we said it's a political thicket but at long last we're going to step in and do what we should have done 40 years ago.

Congressman MEEDS. Well, let's assume that the theory of *Baker* v. *Carr* was applied by some non-Indian within the borders of a reservation who was affected by a decision over which he had no representation and no input. Don't you think a court might hold that "due process" means that people who are affected by the decisions of tribal councils, in which they had no input, might be denied equal protection?

Mr. WILKINSON. I would be deeply surprised.

The Supreme Court has made a series of decisions involving the Navajo Nation, concerning questions involving non-Indians. I'm not suggesting that the question you are raising was discussed by the Court. But there has been such a continual ratification by the Court of the Navajo form of government, the Court continually pointing to it in a very positive way and emphasizing the strength of that government, that it would just be very surprising, and I know of no case which would support that kind of result.

My recollection is, and I should have it in front of me but I don't, that the recent ninth circuit decision in *Oliphant* against *Schlie* discusses the argument that you are suggesting. But I am not suggesting that it isn't a question worth raising.

I just would find it very hard to believe that a court would rule that way.

Mr. ALEXANDER. The *Baker* v. *Carr* typecases under the Indian Civil Rights Act pertained exclusively to Indian acts under reapportionment with a councilmanic district and there is in *Groundhog* and *Keeler* a finding that it was not the legislative intention to force tribes into a republican form of government for *Baker* v. *Carr* purposes, however, so—the following line of cases, where tribes selected such a form of government and used council districts they would be held to those standards.

So, the courts are fairly consistent in this area in not taking the whole voting reapportionment line of Federal cases under the 14th Amendment.

Congressman Meeds. As to Indians?

Mr. Alexander. Yes; those cases are as to Indians.

Mr. Wilkinson. Now I want to return briefly, and I hope this is even more responsive, to the recent cases involving equal protection.

They hold that an Indian tribe is a political entity, a governmental entity and not a racial entity. We have lots of noncitizens in the United States who can't vote. The noncitizen of the tribe residing on the land should be in the same position. If that person has not been accepted into the tribe, into the political entity, that person should not be permitted to participate. I really am satisfied that that is how the court would come down.

I feel obligated to repeat that any question of permitting non-Indians to vote in tribal affairs would be one of the most extreme steps of abrogating tribal sovereignty that the U.S. Government has ever taken.

Congressman Meeds. But you wouldn't deny that Congress has the power to do that.

Mr. Wilkinson. There is no doubt in my mind that Congress has the power to do it. I just start thinking of the mid-1950's when I think of that kind of concept. I think it's that fundamental.

Mr. Taylor. I would condition that remark to the extent that Congress would have the power to deny recognition to the acts of tribal governments over non-Indians, unless they allowed non-Indians to participate. The Congress does not have the power to open up the tribal political process and allow non-Indians to vote in those tribal processes. You can condition the power of that tribe but I would say that it's beyond the jurisdiction of the United States to open up the political processes of the tribe and dictate electoral process.

Mr. Alexander. The part about beyond the jurisdiction of the United States needs to be expanded on and that is simply a point that it is the U.S. courts that determine what the U.S. jurisdiction is and to repeat what was said to us frequently in Indian country.

The question of the power of the United States which is based on its system is a question of might in its final analysis.

So that needs to be stated.

Congressman Meeds. Isn't any legal system, in the final analysis, based on the ability to enforce. Isn't that what you are saying?

Mr. Alexander. Yes.

Congressman Meeds. I wouldn't disagree with that.

Mr. Whitecrow. Will the gentlemen yield?

Congressman Meeds. I have finished. Thank you.

Mr. Whitecrow. Thank you.

I would like to find out just exactly where we are now for my own personal information.

Let me tell you what I think I understand after all of this conversation now. I think that it's my understanding now that we are recognizing that a tribe is a government, that a tribe has sovereignty, that a tribe would have jurisdiction over its geographic boundary area.

Now, one of the questions that I understand is under consideration here is whether or not non-Indians would have legal voting rights within that tribal area.

Now, one of the questions as I see it, is the fact that a tribe has the right to determine its own citizenship. I would like to pose this question to the staff.

Supposing a tribe then assumed a jurisdiction over its geographic boundary, applying its sovereign right, coming under the plenary powers of the Congress, recognizing all of those citizens within its boundary as members of that tribe.

Now, we're getting away from blood relationships here. In this event then, would the Federal Government still be responsible for the delivery of services to all those tribal members whether or not they were of Indian descent?

Mr. Wilkinson. Well, I'll answer that, and I hope people will speak up, if they have an addition to make.

I believe right now, under present practices, that the Bureau would not provide those services. In my judgment that practice is highly questionable, that it may well be required of the Bureau to recognize that tribes have the power to determine their own membership——

Mr. Whitecrow. Say for instance we did. Say for instance this Commission did come up with this recommendation, that allowing a tribe to assume those jurisdictional processes and recognizing the fact that the tribe has the sovereignty to do so. Then, if the tribe or then those non-Indian persons residing in its geographical area as members of its tribe, would we not have to recommend legislative action also to expand those treaty rights?

Mr. Wilkinson. I think that the kind of problems you're suggesting would come up. Yes. I think that there would be a number of additional acts that would have to be passed to account for this unusual situation. Yes.

Mr. Alexander. To get back to our trust discussion of yesterday of the prime obligation of the United States being to the political entity of the tribe, they will decide the notion of social services from that moment. There would at least at minimum, be an obligation to support the government and the resources of that population and the government services which relate to the permanency of that government.

Mr. Whitecrow. It goes back to my basic question from the initiation of this whole Commission.

Did the Federal Government make treaties with quarter blood Indians, did they make treaties with half bloods, full bloods or did they make treaties with tribes; and did they at that time tell the tribe who its members were?

Mr. Alexander. The Federal Government's relationship is a political relationship between a government, the United States and a tribal political unit, a tribe. Not treaties with individual persons and not a political relationship with individual persons.

Mr. Whitecrow. Well, knowing Indian people as I do, I am sure that very few of them would actually accept any non-Indian into the tribal membership. I'm sure this would never come about. But what I'm trying to get over here is what kind of process could be developed, whereby the non-Indians in that geographic area could have some form of representation.

Mr. WHARTON. Specifically to respond to that, Mr. Whitecrow, it wouldn't require a tribe to accept into its membership as a member of the tribe, all of the non-Indians within its territorial jurisdiction to accomplish what it is that you're getting at.

A tribe for instance, to take the example of taxation could set up specific taxing districts in which non-Indian people could have representation and a vote with respect to specific things like taxation, like zoning, like environmental control which would not require membership in the tribe but would allow them representation in those issues which specifically relate to powers being exercised over them on those kinds of issues.

Mr. WHITECROW. I suppose what I'm getting at here is the fact that a tribe would have—if a tribe has sovereignty, a tribe would have that sovereign right to determine its membership the same as the U.S. Government has the right to determine who is a citizen of the United States; is this not correct?

Mr. WHARTON. That's correct.

Mr. ALEXANDER. On Mr. Wharton's point, there is an example as I understand it that came up in our northwest hearing where the zoning commission has non-Indian representation on it.

Different governments organize all of these functions differently. In some States we have appointed school boards. In some places we have elected school boards. The populations that respond or choose those entities that exercise zoning power, taxation power, education power are defined by the government. But, they may be appointed, they may be elected, for some purposes they may be narrow districts, they may be broad districts.

All of this though, negates one point in the tribes obligation under existing law in exercising any of these functions, it still has to use fundamental due process—the administrative due process.

If you are determining to zone someone's land, they have hearing rights, they have the same rights that you have as a citizen in Oklahoma with a piece of land in Nevada. You have administrative rights as to what is done with that land. You have representation, you have court action, possible to protect your interest. Which is how most of us in fact do protect our interests, through these various and sundry proceedings, be it taxation, be it land use, be it an environmental issue.

Commissioner WHITECROW. Well, then what I see here—I don't really see a great deal of difference in what we're talking about here and what we currently have in existence in the country.

The fact that when I come into Washington, D.C., or for that matter, any of us when we come into Washington, D.C. We pay taxes within the District of Columbia. We also pay taxes wherever we may go and we don't have representation on those city sales taxes and what-have-you, so I can't really see whereby we would have any great difference, if we'll say as an example, a tribe would apply a sales tax within its geographic boundary area of jurisdiction.

I can't really see that we're having that great of a problem. Now, maybe I'm wrong. Maybe I'm not seeing the whole picture.

Congressman MEEDS. Will the gentleman yield?

Commissioner Whitecrow. Yes.

Congressman Meeds. The major difference is that most Americans have some representation in the decisionmaking processes in the place of their residence.

It's clear you don't have any input into the decisions of the city of Washington, D.C., if you don't live here. But if you do live here, you have an opportunity to vote for the people who make the decisions which affect your life where your residence is. I think due process requires that opportunity not in South Dakota or someplace else, but in the place where you reside. That's the difference.

Commissioner Whitecrow. Let me ask this question: In that case, how about these people who are aliens and they are subject to taxation without citizenship?

Mr. Wilkinson. That is the situation I was thinking of.

I think that there are many, many people who live here who are not American citizens who have no vote at all. However, they have chosen to come here and are not citizens of this country. People chose to go to an Indian reservation and traditionally did not have a vote in that government.

And, in my judgment, that is not unconstitutional.

Congressman Meeds. Well, again, there is a distinction there. You're talking about aliens who have come into this country voluntarily.

In the instance where an individual goes to an Indian reservation and resides, he is an American citizen and he is residing on American territory. Although it is an Indian reservation, it is still part of the United States of America.

So that's a very substantial distinction.

Mr. Wilkinson. Well, again, it's the thread of international law that weaves through Indian law that is not a figment of anyone's imagination. It is not a radical notion. It appears in the cases and I deeply believe that the analogy is fair and would be upheld by the court that a person choosing to reside in an Indian reservation does not have a right to vote in that tribal government and that that is not a denial of any constitutional right. They would still have the right to vote for State officers, for Federal officers, but not in the tribal government. They are not a member of that political unit.

Commissioner Whitecrow. I would like to ask a question in regard to this: If this is the case, and if this is the situation that we're looking at without representation, what about the—we'll say the nonmilitary individual, entering a military reservation and coming under marshal law?

You have no representation in the development of those codes.

Mr. Wilkinson. I think that's right.

Mr. Alexander. His representation just to take the point that Charles made a while ago, his representation and his vote is through the U.S. Congress.

Mr. Taylor. I have a little difficulty debating these questions on a high theoretical level and I think it might help if we talk about some cases.

First of all, on a theoretical level I would like to express my agreement with Mr. Wilkinson and Paul. But, it occurs to me we're dealing here with some very practical problems and if the tribe is going to be the primary government within the reservation, it has certain responsibilities. Hopefully in the long run, what we're aiming for in tribal government is that they are economically independent, that they function on the same financial base that the other governments in this country are functioning under. And I think that the due process protection under the 1968 Civil Rights Act provides a cushioning effect here, which tends to cut out arguments of non-Indians about their fears.

But, when we start talking practical cases, I was at Lummi Reservation and that reservation sits on a peninsula, a very attractive land out there and non-Indians have purchased parcels of land out there and built nice homes. And Congressman, I'll have to defer to you on this one, but I don't think there is a fire station within a good many miles of that place. Now if the Lummis are going to have government and one of their functions is going to be to deliver fire protection, the obligation should be to deliver that protection on a nondiscriminatory basis to everybody on that reservation.

By the same token, they should have the tax power to raise the money to buy the fire engine to go fight those fires.

That's the kind of tax authority we're talking about. Ada Deer Reservation, Menominee, with just 300 non-Indians—are we going to say that 2,300 Indians have to pay for the fire engine that has to also be used to help those 300 non-Indians?

I think those people have an obligation to participate financially. Now, I do like the idea and I hear this thing about Yakima.

It more or less supports a paragraph in here that tribes are going to act intelligently. There they've come up with a system on their zoning ordinances where they are allowing the non-Indian participation in the development of these decisions.

I really think the record, if we stop and take a look at it, time and time again will show tribal cooperation or at least the extension of the hand of cooperation.

Congressman MEEDS. Peter, if I may depict a bad example. The Lummi Reservation is in fire district 13 as a matter of fact. It's a very bad example of what you are trying to point out. The facts are just the opposite.

The fire district which covers the reservation is a fire district under State law. The fee holders are the only ones who are taxed for it. An average of 78 percent of the calls are made for Indian homes and families, yet the Indians pay not 1 cent toward the maintenance of that fire district and the non-Indians are incensed about it, and I don't blame them. I've met twice with the tribal authorities there.

On one occasion I met with Sam Cagey, on another occasion with Vernon Lane. In the meeting they indicated they agreed that it was not a good situation and that the tribe ought to be participating and that they would try to see that the tribe did participate. The first meeting I had with Sam Cagey was about 18 months ago and there's been no participation from the tribe as yet. I hope it will be forthcoming.

But, that is not a good example and I want you to know that. I wouldn't have pointed that out except for the fact that you brought it up.

Mr. TAYLOR. I'm glad we hit on this because these are the kind of hard cases that are bothering you and they are bothering me. I think the example of Lummi—it's too bad I chose Lummi in view of the response, but it does show, I think we are getting this out—what we are trying to say in this document, perhaps Quinault or Warm Springs would have been a better example or Menominee, but it's pointing two things. It's pointing, I think, to allowing these governmental processes to go. It's also pointing to the need of Indian tribes toward accepting responsibility. This Commission, we have to point our fingers at every sovereign in this country, that Indian tribes are not exempt from that, but so are States, counties, municipalities, Congress and the Executive.

Mr. ALEXANDER. But, it will also take us one further step, which is something we were discussing this morning, which is a need for a mechanism to work out the intergovernmental relations supported by the Federal Government. The situation on Lummi, on the fire district could be in total reverse.

It could be northern California or southern California where there is denial of fire services to Indians. In the Colville Reservation, you have had an example for quite a number of years before the tribe started its own police department of a substantial economic contribution to the county sheriff's department in the six figures. And you now have a situation where a tribe is frustrated by the lack of the ability to get appropriate nondiscriminator services from its non-Indian neighbors and has reasserted its concurrent jurisdiction on law enforcement and has done it to such an extent that non-Indian governments in the area are contracting services from the tribe, instead of from the non-Indian county. That type of tribal government needs to be supported and mechanisms need to be established and developed to try to help this process along, which takes us back to where we were this morning.

Commissioner WHITECROW. Mr. Chairman, I certainly wouldn't want to put one of our fellow Commissioners on the spot here, but we have one of our Commissioners that is the chairperson of one of our recently, newly recognized Indian reservations and I recognize Commissioner Deer as a very able and capable individual, fair in all respects, not only to the Indian but to the non-Indian alike, and I would like to ask a fellow Commissioner how you view this particular situation, jurisdiction, sovereignty and due process whereby you would provide services, provide for relationships with the non-Indian in your reservation area.

Commissioner DEER. That's a big question. I was just commenting to Congressman Meeds about it, and our situation and Menominee.

We do have a cooperative relationship with the county government. We do have contracts that have been negotiated between the Menominee Restoration Committee and the county government for different arrangements.

We feel that being in the majority, both in the restoration committee and in the county government, and I must say, that 11 of the members of the county board of supervisors are members of the tribe, that we do have an obligation to the non-Indian in our area.

In response to your question about the jurisdiction, I would point out by reading earlier of our association of jurisdiction in our constitution.

Now, of course we realize that there perhaps will be court cases on this but this is what we are doing now, asserting our jurisdiction and I think that this is what tribes need to do across the country, assert some of the sovereignty and jurisdiction that has been eroded and has been diminished over the years.

I don't feel that in our situation at Menominee that we will have an antagonistic situation. That we are taking a reasonable approach with the county and with the State; and I feel that once our tribal government is in full force, that this will continue.

Now, I don't know if this answers all your questions, Commissioner Whitecrow. I'll be happy to respond to any points you think I might have missed.

Commissioner WHITECROW. Thank you, Commissioner Deer.

Just one thing that I think really has a great bearing upon our whole total discussion here insofar as recognizing a tribe, its tribal government, recognizing that a tribe as a government must begin trying to finance itself and function as a representative of the people. I would like to go back to Public Law 93–580, a law that really sets this up. I would like to read the congressional findings that established this particular law.

Congress, after careful review of the Federal Government's historical and special legal relationship with American Indian people, finds that the policy implementing this relationship has shifted and changed with changing administrations, and in the present years without apparent rational design and without a consistent goal to achieve Indian self-sufficiency.

That self-sufficiency to me is something that the Federal Government is after, something that the Federal Government really and sincerely and truly wants to come about, and the only way that I can see Indian self-sufficiency can be attained, is through reestablishing a tribal government so that it could become self sufficient.

If we are really and truly looking at that, I think we must look at this as sweeping change and we must realize we are going to have an educational process.

And, Commissioner Deer, I think your attitude and your approach to this is certainly a very reasonable and a very intelligent approach to what you have going on and I feel that I can speak for all of those other tribal leaders that I am familiar with. They too have the same concern, the same approach and I don't feel we can look for any kind of radical change insofar as their approach to their responsibilities.

Congressman MEEDS. Will the gentleman yield?

Commissioner WHITECROW. Yes, sir.

Congressman MEEDS. The gentleman just recited some words which had some connection. I must say that from time to time I've been called upon to eat my own words and I've found them largely palatable.

Mr. TAYLOR. I don't know whether we've exhausted this tax thing, but I feel that some of these questions like tribal jurisdiction over non-Indians—the criminal law field is a good one to examine this in.

I'm sure all of us at this table have some special situations we know of but, you know, law and order is obviously something that is to be desired. Non-Indians want it, Indians want it.

I don't see how you can have law and order if you say that a tribe cannot, per se, exercise jurisdiction over a non-Indian.

That's a position that the Department of Interior has taken for about 40 years. Actually, this case is finally coming up, *Oliphant* v. *Schlie,* just decided by the ninth circuit. It comes off the Suquamish Reservation and, incredibly, the reason that the tribe took jurisdiction of a non-Indian was that they had only recently gotten a constitution or regained their legal status. I'm not sure just what their situation was then. They were a very small tribe and they had not been told yet that they didn't have jurisdiction over a non-Indian. They fell into the thing.

The first case on the Suquamish Reservation arose on a parcel of tribally owned trust land within the reservation boundary. The fact situation is very compelling. The tribe was having an annual ceremony powwow or something. Every year there is a very large number of people that attend that—that had gone to the reservation.

The tribe called the local county sheriff and asked him if he would station a couple of deputies out there to help maintain law and order. His response was, I don't have the manpower to do it; I'll be in my office; I'm 40 miles away—I think it was 40 miles—and if any problem arises, just give me a call.

They had a complete absence of law and order authority. Sure enough, about 3 o'clock in the morning a non-Indian got crocked and a tribal police officer went over to try to restrain him and the fellow took a swing at the cop. A very unwise thing ever to do to any police officer. So, he wound up in the local jug, which happened to be a jail downtown, a non-Indian town that they had a contract with.

All right. That's the *Oliphant* v. *Schlie* case. There's another one coming behind it, the *Belgarde* case. The next question is, does the tribal jurisdiction—well, the Federal court upheld the tribal jurisdiction over the non-Indian in *Oliphant.* The next case was, does that jurisdiction extend to fee patent land within the reservation; and this is the *Belgarde* case. Oliphant is involved in this one, too, only as a passenger this time.

Chairman ABOUREZK. Is this the same guy that got drunk?

Mr. TAYLOR. And I think he's probably drunk again. I want to qualify this—I believe he was drunk. I don't want to find myself in court as a defendant.

This *Belgarde* case involved a vehicle chase around the reservation. Now here you have the checkerboard system. Part of the chase was on trust-allotted land, part of it was on—I guess State-owned land, non-Indian-owned land, and probably part on tribally owned land.

When they finally pulled Belgarde onto the side of the road, and Oliphant was a passenger in the car, they were on fee patent land at that point.

The tribe had a brand new police car, pulled it up in front of Belgarde's car so he couldn't move—standard police practice. Belgarde got mad, jammed on the accelerator and rammed the police car. Now, are we going to say that a tribe doesn't have jurisdiction in a situation like this?

I'm sure that the Federal court is going to say that they do. We have to accept the premise that the tribal jurisdiction over a non-Indian is not excluded per se. When we start talking large allotted reservations, we have genuine problems on land use and taxation.

But, we cannot have the position—anyone who believes in law and order cannot have a position that tribes cannot exercise jurisdiction over non-Indians, per se.

Congressman MEEDS. Mr. Chairman, you would not disagree with me however, that if the recommendations, which we have before us, are adopted by the Commission and implemented by legislation, the *Belgarde* case would be, in effect, legislatively decided. We would also be deciding whether tribes had jurisdiction over a non-Indian who committed first-degree murder.

Mr. TAYLOR. If we adopted paragraph 1 on page 10?

Congressman MEEDS. Right.

Mr. TAYLOR. My answer is, yes, I think we would be legislatively deciding the *Oliphant* case.

Congressman MEEDS. And also first-degree murder.

Mr. TAYLOR. Well, you have the 1968 Civil Rights Act, which limits tribal jurisdiction to $500 fine and 6 months in jail. It raises another question, which is tribal jurisdiction over a major crime type offense.

What you have are separate sovereigns. The Department of Justice has taken the position that some Federal court decisions have stated that the Major Crimes Act withdrew jurisdiction from the tribes and vested it exclusively in the Federal Government. That's never actually been clearly decided yet. The Federal case statements on this are dicta but the Department of Justice adopts this position.

I will speak personally on this one. My feeling, and I know I speak for everyone at this table, is that jurisdiction was not taken away from the tribe. The tribe has concurrent jurisdiction. They are also separate sovereigns, and a prosecution by the tribe should not bar a subsequent Federal prosecution.

These two sovereigns can go hand-in-hand on that, just as the Federal goes hand-in-hand with the States in some of their situations.

Congressman MEEDS. Are you aware of any tribal jurisdiction over any of the 10 major crimes, which has been asserted since the passage of that act?

Mr. TAYLOR. I'm not aware of any cases on it but I am aware of the fact that the Hopi, through the law firm of Boyden and Kennedy in Salt Lake City, revised their code and proscribed the crime of murder so the Hopi Tribe does have that jurisdiction asserted at least in their code.

Mr. ALEXANDER. I'm not sure if the case has arisen yet, but it is being given significant consideration and I think that the factual problem that exists needs to be somewhat explained in this context. There is a significant and substantial failure by the U.S. attorneys generally to prosecute felonies that have arisen on Indian reservations. We have heard that all over the country. The National Tribal Court Judges Association, to a certain extent, has documented that in its series of studies.

What impact that has had on the Indian reservation is significant and substantial. Where someone is able to walk around on the reservation, having escaped prosecution for a felony, it creates significant local law enforcement problems, and so forth.

Judge Rhodes, who I have mentioned several times, says that personally he can point to six persons on his reservation who have escaped prosecutions. The reasons for this are complex. The FBI are significantly distant from Indian reservations. They are not necessarily appropriate investigators when they get there. They don't necessarily know the local scene or interact well with the local people.

They are the second law enforcement authorities there. The BIA or the tribal police are both the prime law enforcement authorities on the reservation. They do not appropriately utilize those local resources in law enforcement.

The lack of major criminal prosecution is a serious problem for tribal justice systems and police cooperation.

I want to point out one other case example. Gila River, the tribe south of Phoenix in Arizona, were some of the first tribes, vis-a-vis consent order to extend jurisdiction over non-Indians in a functional, operational sense. Those tribes were forced against the wall to that position. They were losing tribal assets. The lives of the people in that tribe were in danger by not exercising that jurisdiction previously.

There are stories of mesquite wood, which is a valuable asset, being ripped off by people coming into the reservation for commercial and personal purposes and just driving away with impunity.

The stories of hunters coming into that reservation, chasing through residential areas and firing guns through people's clotheslines, yards, and so on, are what forced that tribe to extend that jurisdiction.

Since 1972 the Gila River Court has run over 3,000 cases and there has not been one single, solitary Indian civil rights appeal against jurisdiction over non-Indians in Arizona in those cases; and Peter has told a story and he knows it better than I, of a non-Indian lawyer representing a non-Indian client in the Quinault court; came out of that court system and said that was the best judge and the fairest court system that he has ever been in. That he would rather be in that court system with his client than in any of the other surrounding county or State court systems.

And that's what gets us right back to No. 1. The premise is the assumption that they will act intelligently, responsibly, and fairly when exercising power; and that is what we are talking about.

Mr. WHARTON. I think an additional comment with respect to major crimes jurisdiction is relative here. There are 14 enumerated major crimes, one of which was most recently added, which is to deal with the kidnappings between Indian people that occur wholely within the reservation.

I think one of the things that that points up, is that tribal courts do have jurisdiction over those serious crimes which are not enumerated in those 14 serious crimes in the Major Crimes Act; so in fact, tribal courts do exercise jurisdiction over serious crimes.

The only problem is, of course, that when they do exercise such jurisdiction, they are limited to 6 months and $500 fine.

Congressman MEEDS. Just one more question in this area. Is there a recommendation that the Major Crimes Act be repealed, insofar as it applies to the Federal Government and non-Indian?

Mr. TAYLOR. No; I don't think the Indian people would want the Major Crimes Act repealed. I do think they would like to have it interpreted.

Mr. WHARTON. The thrust of the recommendation——

Commissioner WHITECROW. Excuse me. Don, and Mr. Chairman, may I ask a question?

Chairman ABOUREZK. Do you have a question that will follow up on this or is it a new area?

Commissioner WHITECROW. Yes, sir. It will follow up on this.

You don't think—there is no recommendation for repeal of the Major Crimes Act, but what would happen, say with the assimilated crimes act in a tribal geographic area?

Mr. WHARTON. Assimilated crimes act is a separate issue involving the application of State——

Commissioner WHITECROW. We will cover that later then.

Mr. WHARTON. Yes; we will.

Chairman ABOUREZK. I would like to, before you start, Pete, the police in the building have said that if we want to come in tomorrow, we're going to have to make arrangements now and I think the Commission had better decide whether or not we want to have a session tomorrow.

My view of it is, that once we get beyond the Federal delivery system, we will not have so much discussion or controversy as we've had in these other sections and it's going to go a lot quicker; and my feeling is we may not need a session tomorrow.

Besides that, there are two football games on——

[Laughter.]

And we know where our priorities are, right? So, what's your pleasure? What's the pleasure of the Commission. Do you want to come in tomorrow or should we wait until Monday?

Commissioner WHITECROW. Mr. Chairman, are we talking about adjourning this afternoon, now and then coming in tomorrow?

Chairman ABOUREZK. No; not adjourning now. Adjourning at 5 o'clock and coming in tomorrow.

Commissioner WHITECROW. I was going to suggest that if we wanted to adjourn now, this would be a good time to begin realizing that Oklahoma State University is going to win the Big 8 Conference today by overthrowing and defeating Iowa State; but personally, I would like for us to come in, because I see a tremendous amount of workload here and I would like to at least spend 2 or 3 hours tomorrow.

Chairman ABOUREZK. Louie, what's your pleasure?

Commissioner BRUCE. Yes; I think we should meet tomorrow.

Chairman ABOUREZK. Adolph?

Commissioner DIAL. Ten to one tomorrow.

Senator METCALF. If the Commission wants to meet tomorrow, then I'll be here.

Chairman ABOUREZK. Then it is the consensus that we will meet. The decision has been that we come in at 10 and adjourn at 1 tomorrow. That sounds good because the game starts at one.

Senator METCALF. Can we go home at 4, so we can see the USC game?

Chairman ABOUREZK. Today, well, all right.

Patty, will you notify them that we would like to come in at 10 and adjourn at 1 tomorrow. It will be the Independence Avenue entrance, right down this way.

Mr. ALEXANDER. What arrangements can be made to make sure that the audience people, the people who do not have identification can come in.

Chairman ABOUREZK. Patty, will you make arrangements that one of our staff can be there about a quarter of 10 to identify members of the audience.

And one thing, we most likely will get to Federal delivery systems by tomorrow, so for the benefit of the audience and those people interested in that, that will be most likely tomorrow, unless we get hung up further on this subject today.

Commissioner BRUCE. Could I ask one question, Mr. Chairman?

I'm sure you all have a copy of the article concerning the Phoenix decision in Arizona. Does that strike that what we're talking about here, Arizona has no right to extend the application of its laws to an Indian Reservation. The Arizona Supreme Court, in an opinion Wednesday, extends the guarantee of sovereignty to Indian reservations created by Executive order.

Chairman ABOUREZK. Isn't that just a restatement of existing law?

Mr. WILKINSON. All I can say is, I'm glad to hear that the Arizona court has reached that position. I will be anxiously awaiting the results from the States of Washington and Utah, which are still forthcoming.

Chairman ABOUREZK. All right. It's 2:30—it's time for a 5-minute recess and we'll be back in 5 minutes.

[Short recess.]

Chairman ABOUREZK. The Commission will resume its consideration and deliberation.

For the information of the Commission members, we have a small item of business to take up before we continue on this particular subject.

Nearly every member of the Commission has received a letter from Sam DeLoria. I have not seen my copy yet, but I am now reading from Jake Whitecrow's copy of it and I'm sure a couple of other copies have been received by Commission members.

I want to read the letter—

JAKE WHITECROW:

DEAR MR. WHITECROW: I have just finished reading a document sent to me from a source outside the Commission which purports to be the final report of task force No. 3, Federal Administration and Structure of Indian Affairs. The source is usually reliable and I must conclude that this document is an unedited version of the report of the task force of which I, at one time, believed myself to be Chairman.

I have not been privileged to receive from the Commission staff a final report, nor have I been consulted in the editing process. This letter is merely to disassociate myself from the above document—representing to me that the sum of my own conclusions nor the quality of my work product. It also does not fairly reflect the many months of labor of a host of dedicated people, much of it volunteered. It is inevitable that there will be casualties in pursuit of a task the magnitude of that set by the Congress for the American Policy Review Commission, and it is clear from an attempt at reading this report, that Task Force No. 3 was Dunkirk. I would like to extend my apologies to all concerned for any failure of diligence, executive leadership, or political and fighting skills on my own part, which may have contributed to this totally unacceptable final product.

As a famous American once said, "I accept full responsibility where the blame should go to others." I would like to extend to the Commission my sincere best wishes for the successful completion of the difficult task before it.

Respectfully yours,

SAM DELORIA.

I am not clear from this letter exactly what Sam wants done. Sam is not here to provide the Commission with an explanation of the letter, because it's obvious that there are unanswered questions to it. Obviously, he did not take part in the writing of the report or the editing and I don't know why he didn't. I don't know if anybody else knows why he didn't.

Congressman MEEDS. Well, Mr. Chairman, Winston Churchill was given an opportunity to write the problems of Dunkirk. Perhaps Sam ought to be given an opportunity to furnish us what he thinks the quality of his work would represent and the report. I think we ought to extend that opportunity to him to provide us with his critique, or a minority report if he wants to be referred to in that way, or ex-chairman's report or something.

He certainly ought to have an opportunity to have his input there.

Chairman ABOUREZK. I don't disagree with that.

Can I ask who else is on this task force? Ray Goetting? Ray was Sam DeLoria—did Sam take part in the writing of the report of your task force?

Mr. GOETTING. Yes; he did.

Chairman ABOUREZK. He took part in it?

I mean on the final outcome of it; was it a situation where he was outvoted by the other two members on what should go in the report?

Mr. GOETTING. No; unfortunately we were unable to schedule all of us to be at the same place at the same time too often, so it wasn't a matter of a vote on everything. We did vote on a couple of occasions but I don't recognize or remember any particular specific controversial area. I really don't.

Chairman ABOUREZK. Adolph?

Commissioner DIAL. Mr. Chairman, it seems to me then, this would apply to any of us, that any one who wishes to make a minority report may do so. When a report is written, it's written. That is history. It cannot be changed and you recall, at some meeting back in the summer, there was a motion to the effect that we would accept task force reports as written. All task force reports as they are.

Chairman ABOUREZK. That's true.

Commissioner DIAL. And so I would suggest that Mr. DeLoria's letter become a part of the record and, if he wishes to present something else, he has the opportunity to do so before this work is finished.

Chairman ABOUREZK. All right.

You and Congressman Meeds have about the same idea. Is that put in the form of a motion?

Commissioner DIAL. I would put this in a motion.

Chairman ABOUREZK. Is there a second?

Commissioner WHITECROW. I'll second it, sir.

Commissioner ABOUREZK. Without objection, the motion is agreed to.

All right, I'll direct the staff, Ernie Stevens, to write a letter to Sam DeLoria, telling him that his letter will be appended, unless he doesn't want it appended to the final report, and as a minority view, and if he would like to further detail his minority views, he will be given that opportunity. We will have to apprise him of the time constraints, when the report will be published and so on, but you might want to do it by telephone even, if you feel like it—and then follow it up with a letter.

Commissioner DIAL. Mr. Chairman, you understand I was including all task force reports and all people involved in this motion.

Chairman ABOUREZK. I understand it now.

Commissioner DIAL. Let that be part of the record.

Chairman ABOUREZK. OK. And you will write the letter, Ernie?

Mr. STEVENS. Yes, sir.

Chairman ABOUREZK. Here is Jake's letter back. OK.

Are we finishing with No. 2? Does anyone else have any comments or questions on part 2?

How about part 3 then, moving right along here.

Mr. TAYLOR. Mr. Chairman, I think by covering these first two paragraphs, we've pretty well explored the problems of jurisdiction.

I was going to suggest that—well first, I think we've covered the jurisdiction thing. I think we see where the problems are. I think we see the concerns that are being expressed here. I don't know when the Commission will meet again. There's been talk of a December meeting and there's also been talk of moving it to the first week in January.

Chairman ABOUREZK. We will decide next week, Pete. After Ernie has put together some optional dates for us and so on.

Mr. TAYLOR. Well, my suggestion at this point is that we, as a staff, consider—I think that some degree of consensus has come here. Perhaps a motion or a discussion should be had, but I think what we as a staff need to do, is take these recommendations which I must say were done in haste, to get ready for this meeting.

There are imperfections here. I don't think any one of us would want to stand up and say this is a final document. This is an extremely important meeting because it's helping us to shake down ideas and wording and all kinds of things like that, so I think we need to come back to the next meeting with a more refined treatment of the subject and one which attempts to take into consideration some of the concerns that have been expressed here.

I would see them as perhaps alternative considerations. I certainly yield to none on the question of tribal sovereignty and tribal jurisdiction, but I do understand the problems here, and I think also in this discussion, particularly when we start talking about actual cases, I have the sense that what is coming out of this meeting is openmindedness, a willingness to make further consideration of the problems.

So, saying that—there is one paragraph back on page 58 that's jurisdictional that I think we should run through very quickly and then these next paragraphs here on page 10 deal with a subject totally unrelated to jursidiction and I think we would have to cover those quickly.

Chairman ABOUREZK. Let's cover those as quickly as we can. We are talking about, in effect, a transfer of power away from the area and agency superintendents and more toward the tribes; isn't that correct?

Mr. TAYLOR. No. This section is more directed toward administrative practices.

Chairman ABOUREZK. But a transfer of power, nevertheless. You're talking about who can veto what and how a veto will be handled and so on?

Mr. TAYLOR. Yes, that's correct.

Chairman ABOUREZK. All right. We can deal with those. I don't believe they are as controversial as the area that we just covered; in fact, probably nothing will be as controversial as jurisdiction.

We are still on page 10, paragraphs 3, 4, and 5.

Mr. TAYLOR. I will just read the first sentence, paragraph 3:

> The authority of the Secretary of the Interior to disapprove a proposed tribal government initiative should be severely limited to a definite procedural safeguard.

The proposal here is relating to purported powers that were transferred to the Secretary of the Interior by section 2 of title 25 of the United States Code. It's a statute that dates back to either 1832 or 1834, which designated the Commissioner of Indian Affairs to administer Indian affairs.

Clearly, what was intended by that section is that he should administer acts that are passed by Congress. It was not a transfer, a delegation of congressional authority to regulate all Indian affairs.

An interpretation such as that is clearly unconstitutional. If there was such a delegation, it would invade the separation of powers doctrine. But Interior has operated on that premise, really, for 150 years.

In connection with that, the Secretary has taken unto himself powers to veto tribal ordinances, to pass judgment upon the power of a tribe to levy a tax on dogs—even that belongs to members of the the tribe. Questions on whether or not the tribe can pass an ordinance that would haul away junk cars that are laying around.

I don't think section 2 was ever intended to give that kind of power, and if in fact it did, certainly, the Congress ought to say that that's not going to be the power anymore.

So, this is a recommendation that we limit the approval power of the Secretary of Interior to matters that relate to the trust assets.

The intent of this is not to totally remove the Secretary from a process, a governmental process if the tribe so desires. I think the tribe should have a right to ask and insist if they want that the Secretary review statutes that they are passing so that they can get the input and the expertise of the Solicitor's Office or whatever agency is there. But essentially, what section 3 is doing is saying that we've got to put a limit on the approval power of the Secretary and give some definition to it.

Chairman ABOUREZK. OK. I have no problems myself. I don't know about the rest of the Commissioners.

Then, let's move on to paragraph 4.

Mr. TAYLOR. It relates to the power of the Secretary of the Interior in the management or supervision of trust resources or the exercise of his approval power, as set forth above in paragraph 3, should be subject to tribal review.

There's really two proposals going here, coming from two different task forces, but I think they interrelate. The first proposal, which is in the second sentence, is that the Secretary, when he disapproves of something the tribe wants to do with its trust resources, would have to make written findings of why he was disapproving that, explaining the concerns he had about dissipation of trust assets or some such thing. Then supply the tribe with that so that they know why he is taking the position he is taking.

Right now, he doesn't really have to do that. The second provision here would be one that would permit tribes, in the case where the Secretary said, "No, you know, I'm not going to approve your dealing with a trust asset that way," and he serves the tribe with his reasons. The tribe can sit down and say well, "Now we've taken into consideration your reasons. We don't think they're valid. We think your fears are unfounded, so we are going to overrule your disapproval."

The trust obligation should continue. The tribes are afraid, very rightfully so, of losing the continued trust obligation if they override that secretarial approval. But the proposal here would say that the liability of the United States for the trust would be diminished or would be exonerated. The United States to a limited extent, would be exonerated from liability to the extent it involves suits by reason of the tribe overruling the Secretary's disapproval. His trust obligation and liability then would be to help the tribe in the administration or implementation of whatever decision it was they made, and that's basically the proposal that's laid out here.

Mr. WHITECROW. Mr. Chairman, I would like to speak to that, if I may.

What we're talking about is self-sufficiency of a tribal government and the things that I have heard Indian people say is, let us function, give us the authority to operate. Let us learn by doing that; sure, we're going to be making mistakes, but let us be responsible for our own mistakes. I see this approach as allowing the tribe to do that.

Mr. TAYLOR. I think that's correct, Mr. Whitecrow. I am sometimes concerned about this. This proposal would make it entirely optional with the tribe. They are very concerned about their trust resources and the role of the Secretary in helping to protect those and they don't want to just lose that, but I think it does reach to this thing of allowing tribes to have much greater input in the management of their resources and limiting the power of the Secretary in the management.

I could go further, if——

Congressman Meeds, you look a little puzzled and I don't know whether I should stay on this.

Congressman MEEDS. I am in general agreement with this. It will change a lot of things and I think we have to recognize that. If the Commission goes on the record in adopting a lot of the other recommendations, it would be incredibly naive to continue the authority which the Commissioner is now exercising with an effective veto power over most any tribal action that is taken.

That, of course, is premised on the basis of the trust relationship, not only for resources, but for the persons and actions of Indians. And, I think what you are doing is eliminating that portion of the relationship which deals with the actions of Indians. It's something we should have done a long time ago.

Mr. TAYLOR. We're trying to do that very cautiously.

Congressman MEEDS. I understand and I understand what the effect will be. I don't know that when we get all finished that I'll be in favor of limiting the trust responsibility. I don't know that some of the other protections which I'm in favor of will still be around. But, you know, I have no basic disagreement with that philosophy.

Mr. TAYLOR. I would like to just——

Congressman MEEDS. As a politician, I recognize it as just a pawn.

Mr. TAYLOR. Maybe I should keep talking.

Congressman MEEDS. And I've never been one to use a pawn.

Mr. TAYLOR. I certainly don't view it in that context, but I think it is important to say that this is not a removal of the trust responsibility. It simply is allowing, let's say areas of negotiation between tribes and the Secretary.

Congressman MEEDS. It's a removal of the authority of the Secretary or the Commissioner or other agencies to substitute his judgement for that of the Indians.

Mr. TAYLOR. Without termination of the trust. Now, that's a very critical point. I mean, termination was sold in the name of freedom from paternalism and from my own standpoint——

Congressman MEEDS. Perhaps it's a removal of that paternalism part.

Mr. TAYLOR. Fine. I think we understand each other.

All right. Paragraph No. 5 deals with problems the tribes have in relationship to Federal statutes of two different natures. One is Federal statutes that provide for the delivery of domestic assistance programs, programs that are available to States, counties and municipalities and that all too frequently, tribal governments are excluded from participation in, because of the way a statute is phrased.

There was a study done by the American Indian Law Center under contract from ONAP called the FIDAP study. They identified many of these statutes. There was no firm proposal for reform that came in. Two of the task forces recommended an approach that would declare that for purposes of Federal domestic assistance programs, tribes shall be considered on the same basis as States as being eligible. So, that's the first group of Federal statutes.

I think what we're asking here is just that again it's something that we need to do more work on the drawing board and we find—I think the basic concept is good. I might say the FIDAP study that was done under the ONAP contract did not like the idea of a simple declaration that tribes would be considered the same as States, so there is a division of opinion on how to resolve the problem. There is unanimity in the opinion that there is a problem.

Senator METCALF. Mr. Chairman, may I make a comment?

A few years ago, Senator Mansfield and I went to a hearing, I was a Member of the House of Representatives at the time, and we and the Indians testified on behalf of a provision permitting Indian tribes to qualify under all the criteria of a bill for—I've forgotten exactly what the bill was.

But, that was the first time that we put Indians under one of the Federal grant programs. From time to time, we've added the Indians to other measures, as eligible entities. I don't know when we failed to do so, but I certainly wouldn't like a general proposition of saying that Indian tribes shall be considered as beneficiaries of all these grant programs.

Sometimes we only make the programs directed to say school districts or sometimes to counties and sometimes to States. I agree with you that you shouldn't filter the tribal government's grant through the State's grant; but I think, again, we should go back to the proposition that this matter should be considered on an act-by-act and legislation-by-legislation basis.

The OEO program has done a great deal more for the Indians than almost any other program that I can imagine, because the Indian tribes are especially and peculiarly situated to benefit from self-help building programs and things of that sort.

But, a general piece of legislation I think would be wrong and we should consider it on an act-by-act basis. I have always found that Congress is responsive to including tribal governments whenever the question has been raised and a good case has been made.

Mr. TAYLOR. We have, in addition, input from the American Indian Law Center that conducted the study. It took what I consider a conservative approach to correct the action.

I appreciate the concern you are expressing and so we now have it from you who sat in the first act which was, I think, an Area Development Act, wasn't it?

Senator METCALF. Yes; it was an area redevelopment program and Senator Douglas was holding the hearing and one of the Indian law firms asked us to go over and make a point that unemployment and the failure of Indians to attain certain levels of income and all those things were worse on the Indian reservations than in any other areas, but that the criteria of eligibility should apply.

Mr. TAYLOR. Perhaps we should accept this thing here more as an identification of a problem that's awaiting some further recommendations.

Commissioner WHITECROW. Mr. Chairman, I would like to just state this.

Senator Metcalf, from the standpoint of the OEO Act of 1964, I'm in complete concurrence with you in the fact that it did more for American Indians than any other single piece of legislation that we've had come down.

However, it did not come down uniformly, down to the Indian people throughout the Nation. It was only in 1973 available to 20 percent of the Indian population in the State of Oklahoma and it was not because of the legislation as it was written. It was because of the rules and regulations that were interpreted by the administrative section.

So, I think if we should relinquish anything insofar as this No. 5 is concerned, we should certainly take into account that rules and regulations should be provided so that all Indians, Indian tribes, et cetera, as we are referring to here, would be eligible in any single piece of legislation that might come out.

Senator METCALF. I am in complete concurrence and I merely wanted to say that it seems to me that sometimes Public Laws 874 and 815 go directly to school districts for example; and sometimes to Indian school districts, we bypass the States. It would seem to me that on a case-by-case and legislation-by-legislation basis, when someone would raise this question, I never had anybody oppose inclusion of Indian tribes, but you had to make a good case for it if you wanted it included.

Mr. TAYLOR. It's possible, Senator, that perhaps what we should be recommending—I know that the examination of all of these statutes is a tremendous undertaking. The Indian lawyers have worked on the problem for at least 1 year. They had access to the Library of Congress, computer tapes that allegedly tell you what programs you can get into.

Perhaps what we would wind up with, as a recommendation, would be a special task force that would be funded to do something about the problem, or perhaps additional contracting through ONAP for the followup work.

But, it is a very significant problem. It's not the kind you can resolve with a limited staff. But I think your caution is well taken. The other group of statutes that we refer to here is that Federal regulatory laws must be revised to give due account to tribes as the primary instrument of government within the boundaries of reservations.

Chairman ABOUREZK. Give us an example of what you mean by that.

Mr. TAYLOR. Environmental protection laws that are passed that authorize States to assume certain enforcement responsibilities, sometimes even adopting their own alternative plans to a Federal plan. Coal Mine Health and Safety Act did that.

Before I was in Indian law, I was in coal mine health and safety and I am reasonably well acquainted with that particular piece of legislation.

There are jurisdictional problems going here. We did identify the 1973 or 1975 Land Use Planning Act as an example of what we felt on our Task Force 9 as being a very enlightened legislative approach to this problem.

It's one that does take into account tribes as units of government, but these are the kinds of statutes that we are referring to. Occupational Health and Safety Act——

Chairman ABOUREZK. Unless there is comment on that, why don't you move to that other part of this chapter that you want to discuss.

Mr. TAYLOR. Right.

I would like to refer to page 58D. I guess there are really two parts of it to address here.

Chairman ABOUREZK. Did you say B?

Mr. TAYLOR. "D" as in dog.

Chairman ABOUREZK. Compliance with the Commission's mandate. This directly relates to data concerning Indian needs and recommendations to strengthen tribal government, is that it?

Mr. TAYLOR. No; it's page 58D, Senator, in chapter 6, the jurisdictional things that we've been talking about.

Chairman ABOUREZK. OK.

Mr. TAYLOR. Our recommendations on jurisdiction actually start at page 58 with our staff statement and what this deals with are all of the conceptual issues that we have been discussing here now for—well, roughly a whole day, and which I have suggested that we try to firm up our positions on this so that perhaps we could have a more definite discussion.

But the two paragraphs that appear on page 58D, the two items that we haven't dealt with yet. This paragraph No. 6 identifies certain specific Federal laws which we feel should be amended to achieve the results that we're talking about.

Chairman ABOUREZK. You're talking here about details, which is all right. We have already covered these concepts in a conceptual manner.

Mr. TAYLOR. We have but I think I can run through it in about 2 minutes.

Chairman ABOUREZK. That's fine. I'm not trying to stop you, I'm just saying that I want to clarify that I think we have already covered these concepts. Everyone has expressed their views on the principle of tribal sovereignty and it seems to me that these are mere implementing details, right?

You can go ahead and cover them.

Mr. TAYLOR. I think they run slightly beyond.

Congressman MEEDS. If the chairman would yield to me, this statement about details reminds me of a story of a man and a woman who had been married for 40 years and got along so well that finally somebody asked the fellow how come they got along so well. He said, "It's very simple. I make all the major decisions and she makes all of the minor decisions. I decide for instance whether we're going to recognize Red China, what we're going to do about the Middle East and she decides where we're going to live, whether we're going to have a new car, and those mundane things."

We are now dealing with those mundane things.

Chairman ABOUREZK. I could tell a story too, but I'm not going to do it.

Mr. TAYLOR. Pardon me just a second.

I think Charlie has something that should be said and I concur with him on this.

Mr. WILKINSON. I was speaking with the director, Ernie Stevens, over lunch and I felt as staff, that we perhaps don't have complete direction on where we should go from here.

I know we've had an extremely fine discussion. That is, I think, very fruitful. There are some points Congressman Meeds has raised that clearly will result in the shifting of language and very important shifts in language. But the general question as to whether the Commission wishes the staff to proceed now in line with the staff recommendations, with the suggestions Congressman Meeds has made and a couple of other suggestions that I think the chairman and others have made, is still at least not to me entirely clear. I think we could use some guidance from the Commission.

Chairman ABOUREZK. What's the question?

Mr. WILKINSON. The question is: Do you wish us to proceed in redrafting and drafting further recommendations and findings in accordance with the principles set forth here?

Chairman ABOUREZK. Well, I think so. I think—the point is that unless you run into—I guess we ought to clarify this right now. Unless you run into very stiff opposition from a majority of the Commission and we're not voting and everybody understands that right now, you ought to go ahead and proceed with the concepts as outlined here and if you feel like some of the members of the Commission have objections to what you say, write an alternative platform for him or he'll write his own or she will write her own or whatever. And, provide it as an alternative when we do come to the time for voting.

And, if you feel like that you are in doubt as to anyone of these principles, you might just go ahead and ask us what you ought to do with it and we'll just tell you to either go ahead or stop it or whatever, but unless something is said specifically that you shouldn't even put it in, I think you ought to go ahead and put it in because we're not yet to a point yet where it is cast in concrete. We have plenty of time to eliminate or add or whatever.

Is that how the Commission feels?

Lloyd?

Congressman MEEDS. Mr. Chairman, I find myself in disagreement with a number of these proposals. I don't want to inhibit the whole Commission or anything like that, but what becomes increasingly apparent to me is that I'm going to have to write minority views in a number of areas. I will, by vote, indicate when the time comes with which areas I disagree.

Chairman ABOUREZK. Well, from the discussions we have had, you might even maintain the concept that we have discussed and also put in the views expressed by Congressman Meeds, for example, and any dissenting views, because you are working with it. It would probably help him out a great deal if you would put in his views and put it in as a draft if you can. If you can't, he'll put them in himself.

Mr. TAYLOR. I feel that as we develop this thing—I'm sorry, Senator.

Senator METCALF. Go ahead.

Mr. TAYLOR. That is, we develop this paper. After all, the House Office Building is only across the street from our office and I feel that we have an obligation to confer with you, Mr. Chairman and with Senator Metcalf and Mr. Meeds and all of the other Commissioners to send out our drafts as we are developing these.

I am very concerned about the concerns you have expressed, Mr. Meeds, and they do need to be accounted for in this paper. I would expect, I frankly would expect dissenting views.

We're taking a strong, forceful position, and I think people can be strong behind Indian rights but not quite as far as what some of the things we're saying.

Chairman ABOUREZK. Well, Pete, we would expect you to advocate them very strongly. If you didn't I think we ought to replace you. It's that simple.

Mr. TAYLOR. That's the way I feel too.

Chairman ABOUREZK. OK.

Mr. TAYLOR. But what I'm saying is I know the whole staff wants to work along with the entire Commission as this paper develops. It's our responsibility to you.

Chairman ABOUREZK. I think so far the relationship has been perfect. You speak forcefully for your position and we question you to make you refine it and sharpen it and think about it more, and we in the process learn a great deal, I think, about it ourselves.

And it's working great so far and I hope it doesn't change in fact.

Senator Metcalf?

Senator METCALF. I am in complete accord with you, Mr. Chairman. I have listened carefully to this discussion. I find that right now I'm in disagreement with some of the propositions that have been raised.

I feel that Congressman Meeds has asked some very searching questions. I think that the staff should go ahead with the report, and if I don't agree with the final report I certainly would join Mr. Meeds and write my own dissenting opinion. I think that all of us feel that way.

The Commission report should be strong. I feel that you've come up with vivid and viable statements. I am in complete accord with the chairman that you go ahead. It may be that you can modify some of the things in the light of the discussion, but if you want to submit a report, it's certainly all right with me, and by that time I will be prepared to write concurrent views or dissenting views. Or, just keep still.

Mr. TAYLOR. I think that pretty well covers the jurisdiction. On reexamination of that page, Mr. Chairman, I think we should move back——

Congressman MEEDS. I just take this opportunity to point out to the Commission the language of No. 7. I wonder if the Commission has noticed what No. 7 does.

Mr. TAYLOR. I did not want to stretch the line too far.

Congressman MEEDS. But it does in effect—in combination with some other recommendations with regard to what sovereignty is or what sovereignty should be—extend Indian jurisdiction to tribal jurisdiction of the Sioux, to a good share of Nebraska, South and North Dakota for all purposes.

Is that an incorrect statement?

Mr. TAYLOR. No, I don't agree with that.

Congressman MEEDS. No. 7 says exterior boundaries of the original reservation remain a part of the reservation and Indian country unless an act of Congress has exclusively stated that a reservation has been diminished or disestablished.

I know of no such law disestablishing the Sioux Reservation of 1868. Was it disestablished by a specific act of Congress?

Chairman ABOUREZK. What law specifically disestablished the 1868 treaty reservation?

Mr. TAYLOR. I'm not sure. I'm waiting for expert counsel up here.

Congressman MEEDS. Wasn't that action taken by an act of the Appropriations Committee, which simply took the Black Hills? The 1868 Great Sioux Reservation was disestablished first by the 1877 act ratifying that agreement, with the Sioux. Then by later act in 1889, I believe Congress established the current Sioux reservation in South Dakota.

Chairman ABOUREZK. And then the court cases have been trying to determine which further diminishments there were, is that correct?

Mr. WHARTON. That's correct.

Chairman ABOUREZK. Has anybody on the staff put together a listing or a table of the reservations that there is still a controversey over throughout the country?

Mr. TAYLOR. Mr. Chairman our Task Force 9 identified at least 108 allotment and opening statutes. This paragraph is specifically designed to legislatively overturn the test that was employed in the *DeCoteau* case on the Sisseton Reservation.

It is not intended to restore all of the lands west of the Mississippi to the tribes as per the act of 1802.

Chairman ABOUREZK. Well, if it would be helpful to the Commission if we knew which reservations would be affected by section 7.

Congressman MEEDS. Mr. Chairman, I would agree with you. I think in connection with No. 7, the staff should be directed to provide us with a map of the United States of the areas which would be affected by this. I think it would scare the Commission, frankly.

Chairman ABOUREZK. All right.

Congressman MEEDS. And maybe even members of the task force ought to hear it.

Chairman ABOUREZK. When will the map be done; that's when we need to know.

Mr. TAYLOR. I'm not sure the Bureau of Indian Affairs could supply us with this. You know, we can list the statutes.

I would like to speak a little bit more to this. There is a very definite problem here and I think the *DeCoteau* case, particularly, reflects that problem. That was an adoption case or a welfare—the State welfare department taking away a child from an Indian woman.

This woman was a Sisseton, a member of the tribe. She lived within the original reservation boundaries, but it's a checkerboard reservation. A part of the time she lived on trust allotted land, part of the time she lived on fee patent land, and the State welfare authorities came in and asserted jurisdiction to take her child away from her. The whole thing turned on the question of whether that reservation survived allotment and opening. If it did, if the external boundaries of the reservation were still intact, then any proceedings involving this woman and her child would have to have taken place in the tribal court.

This decision, the *DeCoteau* case, said the external boundaries had been wiped away. The court left the Sisseton with essentially a checkerboard reservation. What they have done is restored to the jurisdictional field the problem that Congress was trying to address in 1948 when Congress defined Indian country, title 18, section 1151, where they said Indian country was all land within the external boundaries of a reservation.

It was to get away from the platte book jurisdiction. And considering the fact that there's 108 statutes out, the potential for jurisdictional disputes is just monumental. The Indian tribes will be facing a tremendous financial drain trying to litigate these things.

What we're trying to achieve here is to freeze things in status quo and then let Congress look at these on a reservation-by-reservation basis. But in the meantime, let's close the doors to the floodgate of potential litigation. In fact, I would take this paragraph one step further and say let's restore the external boundaries of Sisseton. But that's not in this paragraph and we don't have to debate that today.

Mr. ALEXANDER. To take it a step further, what this is talking about is in the *DeCoteau* case, the court was faced with ambiguous congressional language. All we're saying is adopting the rule of construction that has existed but in fact were not applied, we have to act specifically, when it wishes to diminish an Indian reservation.

This should be read in context with proposals made in other sections of the report about setting up Federal mechanisms on a congressional basis. It's what we will recommend to facilitate, reservation by reservation, to stop the floodgate of litigation so people can sit down and work out their problems together.

Chairman ABOUREZK. I'm going to ask you to go up to Sisseton and explain that to those folks up there. I was up there a couple of years ago or something like that for a meeting on Indian jurisdiction. That was before the decision came down abolishing the boundaries of the reservation, and there was a fellow, an old non-Indian fellow got up and asked me from the audience microphone what was it that gave the Indians the right to Indian land and I started to explain that perhaps we ought to go back as far as the 1868 treaty to establish the rights to the land and he interrupted and said, "Well, let's go back further. Let's send them all back where they came from." And when I asked him where that ought to be, he said, "Across the Bering Straits," and he said that besides that, they are all on welfare, they are all on unemployment and, "We're supporting everyone of them."

And about that—this is my time for the story right now—about that time there were, I suppose, 400 or 500 whites in the audience and about 20 Indians sitting all by themselves up in the bleachers in the auditorium. The tribe had boycotted the meeting because they didn't want me to hold it in the first place, but there were these 20 outcast Indians who were not recognized by the tribe nor the white community, and a young Indian woman, about 25 years old jumped out of the bleachers and ran down to the microphone and pointed at this fellow who had gone back to his chair and said, "Do you want to know why we're on welfare? I'll tell you why we're on welfare. You white guys are screwing us Indian women and we're having your kids and you aren't supporting them, and that's why we're on welfare."

And she said, "I can name eight or nine of you right in the room." [Laughter.]

And, you would have laughed to see how many guys were diving under their chairs because their wives were with them, so I welcome you to go up to Sisseton and explain.

Congressman MEEDS. The implementation of these recommendations would effectively abrogate Public Law 280 also, right?

Mr. ALEXANDER. There are specific recommendations in this chapter on Public Law 280 and what is recommended from the staff—basically, what task force four recommended in their remarks, which is approximately 10 general principles upon which a retrocession statute should be drafted.

It follows in large part the principles that are contained in S. 2010. There are differences with respect that have been identified through review of existing retrocession situations, particularly in Nevada, that there is startup help required even to draft the plan for retrocession. S. 2010 provides for resources where a plan has been rejected. In addition, it provides for some restrictions on Secretarial discretion, mostly procedural in terms of specific fingings upon an application, a review process and so forth.

Chairman ABOUREZK. Your recommendations are in this chapter on the retrocession?

Mr. ALEXANDER. Yes, sir; they are.

Chairman ABOUREZK. Am I clear in understanding you, that they run along the lines of S. 2010, with some minor——

Mr. ALEXANDER. Yes. The principles incorporated in 2010 with some modifications.

Chairman ABOUREZK. Well, OK.

We're going to have the map and you will leave the Senator where he can look at the map.

Mr. ALEXANDER. With respect to the map, I would suggest that the existing map put out by the Bureau of Indian Affairs, and we will check this, basically, the one that has the yellow sections for federally recognized tribes.

Chairman Abourezk. Ernie is going to draft a new map for us so he'll take care of that.

Mr. Alexander. Fine.

Mr. Wharton. I did want to respond specifically to what you asked Congressman Meeds.

These principles as laid out here, do not retrocede jurisdiction, because Public Law 280 was passed pursuant to the plenary power of Congress and was a specific delegation of Federal jurisdiction to the States with some exceptions which they specifically delineated.

So these principles, although adopted and recognized would not in and of themselves retrocede 280 jurisdictions.

Congressman Meeds. What then is the report of—or purport of subsection D.

Mr. Wharton. Six D, is that what you are asking?

Congressman Meeds. Six D, as in dog.

Mr. Wharton. Six D talks about retroceding 280 but that would provide for legislation to do that.

Congressman Meeds. Yes, but if we were to accept this recommendation, it would be the recommendation or retrocession as it might later occur in more detail. This is a broad general principle statement with regard to retrocession, but unfortunately I did not hear it correctly interpreted.

Mr. Alexander. For your information the specific recommendations are on page 34 of Chapter 6.

Mr. Taylor. It would include other types of statutes too, Congressman Meeds.

Congressman Meeds. Yes.

Mr. Taylor. In line with the discussion we previously had. I think the Public Law 280—first of all, I think the recommendations in here are consistent with the recommendations that are being made on Public Law 280 and the S. 2010 bill.

Congressman Meeds. As I understand it, we will have a map which will show us the original boundaries which have not been explicitly stated by legislation to be diminished or disestablished.

Would it be possible to construct that map in such a way as to have an overlay which will show the boundaries of reservations which may be diminished or disestablished or parts thereof, but not by explicit legislative action of the Congress?

We're talking about Tacoma again here now. I hate to get specific, but I read this. The city of Tacoma is within the original boundaries of the Puyallup Reservation. That reservation has been disestablished by Executive order, but not by explicit action of the Congress.

Mr. Taylor. I would question the authority of the President to disestablish a reservation. I didn't realize this had happened. I do see the Tacoma thing as a very special type of problem and I would hate to have our conceptions of tribal government and where we are headed with this framed in the context of that tribe.

Congressman Meeds. That's why I want the map.

Mr. Taylor. I understand that.

Congressman Meeds. I would like to see those areas which have been disestablished but not by a specific act of Congress as this requires.

Mr. Taylor. Frankly, it's a big thing you're asking for here and I'm not sure that we can do what you're asking for.

Congressman MEEDS. I don't think we ought to be making any kind of recommendations on this Commission where we don't know what we're doing, Peter.

You know it's great to talk in theoretical terms, if we recommend something we should try and implement it. We don't want to come along and find that we're dealing with something that by no stretch of the imagination are we going to be able to implement.

We will just be preparing another one of those reports that's going to be stored on the shelf and I think we all vowed when we started this business that we were serious about what we are doing.

Mr. STEVENS. Mr. Chairman and Congressman Meeds, I need to talk with the staff about the mechanics of constructing a map. I need to discuss it with them.

Chairman ABOUREZK. Ernie, let me ask you this: Does the BIA have somebody up there who makes maps?

Mr. STEVENS. I suppose.

We can construct a map. The Bureau has a map.

Chairman ABOUREZK. What about the Library of Congress?

Mr. STEVENS. That's possible.

Chairman ABOUREZK. All right. Then do it this way. Make a map of the United States, State by State if necessary. In other words, you don't need all 50 States because it doesn't apply to all 50 States, but first of all find out what the law is, find out what is considered existing reservation boundaries, find out what the reservation boundaries——

Mr. TAYLOR. Mr. Chairman, could we——

Chairman ABOUREZK. Could I finish?

Find out what the reservations are, if section 7 should become law and make that as an overlay. Obviously that would be a bigger area.

So we can lay down a piece of plastic over a piece of paper and see what it's all going to be like. In effect, you might want to do it just on a State-by-State basis.

Mr. WILKINSON. If I can make one point very briefly. This is an important issue. There is strong consensus in Indian country that in areas that were disestablished, that are often now largely non-Indian, tribes should retain jurisdiction to the original boundaries.

That's an issue that is presented here. This is an attempt to overrule the DeCoteau case. It is presented in that context.

This recommendation is to change existing law. Please distinguish this from the situation where reservation boundaries are clearly established and there is some checkerboarded land inside it.

In other words, you have a reservation that is mostly Indian with some non-Indian land inside it. The law now is clear that that is Indian country and that the tribe can legislate within that area. We're not seeking reform there.

As we talked about earlier, concerning where these checkerboard areas, if the tribes are maintaining law and order within reservation boundaries where it is predominantly Indian-owned land, then the tribe needs to maintain that. That's not a law reform change.

Congressman MEEDS. Charlie, you keep saying it's clear. It isn't clear. For instance, in the Agua Caliente area with regard to the question of zoning, it is not clear with regard to taxation. It is not clear with regard to zoning, even in the State of Washington where you probably have the strongest case on zoning. So, it isn't clear what jurisdiction tribes have over non-Indians on fee patent land, even in presently established reservation boundaries.

There are conflicting cases on these things.

Mr. WILKINSON. All right.

What I'm saying is clear is that the courts have treated the situation differently. It is Indian country. The Supreme Court of the United States has indicated that section 1151 will cover civil matters. What I'm saying is that section 7 deals with the question of reestablishing old reservation boundaries.

Now, all I'm saying again, and I should never use the word clear, because we probably know nothing is clear, but what I am saying is that there is a clear distinction between that and section 7, which would extend reservation boundaries into predominantly non-Indian-owned land for jurisdictional purposes, not ownership, so the tribe would have power to legislate out there.

That's No. 7 here. It is a very different situation where the tribe's interest is extremely strong in terms of law and order in regulating on checkerboarded areas within established reservation boundaries.

Commissioner DIAL. Would the Congressman yield?

Congressman MEEDS. I don't have the floor. Go ahead.

Commissioner DIAL. In this work of cartography here, are you speaking of State reservations also, or all reservations or what are you speaking of; only those with the Bureau or what are you saying?

Mr. WILKINSON. I think at the moment, we are talking about Federal reservations.

Commissioner DIAL. All right. You are talking about Federal reservations?

Mr. WILKINSON. Yes.

Commissioner DIAL. Wouldn't it be well for some mapwork to be made also for showing State reservations or, you know, something that takes care of the people in Maine and so forth?

Mr. WILKINSON. Well, I think you are absolutely correct. It's saying that there are nonfederally recognized tribes, terminated tribes to which these principles may also apply.

Commissioner DIAL. But, if you're going to show the reservations, why not show all of them:

Just show them in a different color.

Mr. TAYLOR. Commissioner, I think in order—1 minute, maybe make a different map. Ernie probably has some funds there where he could hire some good work done in this area.

Mr. ALEXANDER. Commissioner Dial, in the existing BIA map which has reservations identified which you may be familiar with——

Commissioner DIAL. I'm familiar with that map. It's not a very good map.

Mr. ALEXANDER. But the State reservations that do exist are on that.

Commissioner DIAL. Louie said he had it made.

Mr. ALEXANDER. You had it made, OK.

Mr. TAYLOR. Commissioner, it seems to me that in order to develop this map, as for here, No. 1 it relates to tribes that are exercising law and order or governmental powers and I may be wrong here, but I don't think State recognized reservations are doing that. I certainly open myself up to be corrected.

Commissioner Dial. That's not the point. The point is that while you are dealing with the map I am only suggesting that you extend that, as you see.

Mr. Taylor. The next point I wanted to get to is what is being asked for here, I believe, are land distribution patterns within these reservations. Now, I know of only one source to obtain that and that's from the Bureau of Indian Affairs.

If BIA can supply us with figures, yes, we can draw the map but BIA does not have these land figures.

Congressman Meeds. I'm not asking for a land distribution system within the original boundary. All I'm asking for is the original boundaries which have not been changed by explicit congressional action.

Mr. Taylor. Then my answer to drawing the map is yes. We would be very happy to do that.

Chairman Abourezk. I just want to settle this—wait, wait, wait, Pete. I've got it all settled. Ernie is going to do the map. It is not your responsibility.

Commissioner Whitecrow. Will this map reflect all treaty boundaries of all tribes or geographic areas of all tribes?

Chairman Abourezk. Well, it should reflect whether treaty or not, anything that has been de facto diminished, when it should not have been—if it were not—in other words, there are some reservations that just by erosion have been diminished. Just by people coming in and settling and there's been no specific statute diminishing that reservation; and if there has been a specific statute, it will not show it, if there has not been, it's supposed to show it where it's been diminished and when it was not supposed to have been under the statutes.

Commissioner Dial. May I add that it shows erosion?

Chairman Abourezk. That's what we're doing. We're showing erosion. That's the only thing that it will show.

Commissioner Whitecrow. The map will actually show the original area and the overlay will show what's taken place.

Commissioner Dial. I'd like to see a series of maps—I know they don't exist, but that show everything. What happened to the reservation system. Maybe you don't have time but maybe you could begin on it.

Chairman Abourezk. If we have time maybe Ernie could do that but I think the other one is top priority.

OK. Anything else in this section we ought to talk about before we go to Federal delivery?

Senator Metcalf. Mr. Chairman, it would be interesting to have a specific example to show the expansion of the Tongue River Reservation of the Northern Cheyenne, where there was a larger reservation, or maybe Indian country as Congressman Meeds suggested, and how some of that reservation is not occupied by Indians at all, but the exterior boundaries were taken away and there was a subsequent congressional action giving the reservation additional land.

Could we have a special map showing what the Tongue River Reservation originally was, what it became after they sent the Cheyennes down to Oklahoma when the President took away some of their reservation?

I think it would be a good example of all the problems that we are confronted with in these various matters that are under consideration here.

Chairman Abourezk. He's indicated he will do that.

OK. Is that it? Last chance. Onto Federal Administration. Federal Delivery System, chapter 7, Chuck Peone. Erine Stevens. I want to thank you all very much. I know you are going to come back on other sections, but we appreciate your help on this, for the last two.

We'll take a 5-minute recess while everybody is rearranging themselves.

[Short recess.]

Chairman ABOUREZK. In operating the platoon system, we find that the taxi squad is not quite ready here and so to give them a chance to prepare themselves to give everybody a chance up here, let the Commission people shift mental gears, we're going to recess in just a minute until tomorrow morning at 10 o'clock.

Before we do, I have some announcements to make. There was a ring left on the conference table inside there. It's a lady's ring and I have it and if someone has lost it and if they would like to identify it I'll be happy to give it to them.

Mr. DIAL. Mr. Chairman I want to make this statement before you adjourn.

Chairman ABOUREZK. Go right ahead.

Mr. DIAL. I believe it's necessary on this map business; Ernie, no one can come up with a good map before this report is due; not the kind that I was speaking of and Senator Metcalf was speaking of and many others were speaking of. Perhaps it would be in order that we recommend that such a study be made and this work take place, if it be a year from now, you know, we're talking about a project worth a couple of hundred thousand dollars and this is the way I see it, because we can't possibly have a good one, Ernie, by the time our work is finished, because if you have one showing the reservation system as it is today, as it was say in 1934, 1900, and 1850 and so forth and with claims overlapping it involves much needed research.

Chairman ABOUREZK. That may be the case, Adolph, it may very well be the case.

We'll have to get a reading on it when you guys start looking for this thing. Looking for it, for how to draw the map and so forth.

Mr. STEVENS. By the next meeting, we can have the map you've requested. When I was with the Bureau of Indian Affairs one of the departments I was in charge of did mapping, so I think I have some grasp of what can or can't be done. Rather than discuss it further why don't we do what we can by the next meeting.

Mr. DIAL. I would say you are like President Truman when he rated the eight best Presidents of the United States and said, "Where do you stand, Harry?" He said, "Well, I like to say, when my time runs out, here's one who did his damndest."

So, you go out and do your damndest, but you won't come up with what we really need but you can come up with something, Ernie.

Chairman ABOUREZK. OK. Anything else before we recess? If not, we will recess until 10 o'clock tomorrow morning.

Oh, yes, Wait one—for one other thing.

Max says, leave your papers in a very neat pile and he assures me that no one will touch them. The door on Independence Avenue will be open; the door will be open to nonstaff people at 9:15 a.m.

All right, we're adjourned.

[Whereupon the meeting was adjourned at 4 p.m., to reconvene, Sunday morning, November 21, 1976, at 10 a.m.]

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

SUNDAY, NOVEMBER 21, 1976

WASHINGTON, D.C.

The meeting was called to order at 10 a.m.

Present: Senator James Abourezk, chairman; Congressman Lloyd Meeds, vice chairman; Commissioners: Ada Deer, John Borbridge, Adolph L. Dial, Louis R. Bruce, and Jake Whitecrow. Staff Director Ernie Stevens. Administrative Assistant, Ms. Ernie Ducheneaux. Commission staff, Paul Alexander, Peter Taylor, Ray Goetting, Donald Wharton, Charles Wilkinson, Charles Peone, and Patricia Zell.

Chairman ABOUREZK. The Commission will resume its session. This morning we will start in on Federal delivery systems and if you are ready to go, Ernie, we are ready.

Mr. STEVENS. The section on Federal delivery systems is chapter 7. We'd like to begin with the general principles, or the end, and then return and go over each section.

Chairman ABOUREZK. What page will we be using?

Mr. STEVENS. We start on page 70 under chapter 7.

Chairman ABOUREZK. OK.

Mr. STEVENS. Before we get started on the principles, I want to emphasize that Ray Goetting and Chuck Peone are two of our staff people assigned to the management study team. Ray was the liaison with the management team and both Chuck and Ray went to the field, particularly in Aberdeen and Phoenix, and participated with separate study teams. Also, the three of us, with the assistance of a couple of other people, will be writing the portion of the Federal Administration Federal Delivery Services.

One of the things we would like to emphasize is that the Commission has to fundamentally lay down some kind of commitment for change. There may even be a possibility that we recommenit that the Indian people make a commitment to fundamental changd. People begin to get irrational when they start talking about time context.

When the BIA management study was announced, the rumor started the very next day about who was going to lose at every office. I don't see how that could happen for some period of time for a number of reasons having to do with the mechanics of how the management study is implemented.

I think the tribes and Congress and the executive department should make a fundamental commitment to change on the basis of what's needed in the BIA. What's needed is to make the Federal delivery system conducive to the tribal planning at the reservation level.

If that's done and if it's mechanically dealt with, then what follows is that the BIA is no longer in the business administering and supervising Indians. If they're in the business of technical assistance, then the very nature of what the Indians need will require those offices as a part of the process to change.

One of the big problems we had in terms of reaction to the management study and all is that people don't understand that what we are advocating is a process, not an event.

I think moving the Bureau of Indian Affairs into another department and so on is a process. I have heard the Commissioner, his staff and other BIA people, including the Under Secretary commenting on the management study. It is felt that if we're going to go to an independent agency, there isn't any sense of an independent anything unless fundamentally, you deal with the main agency and make it functional and make it efficient. That's why we must deal with this BIA management study first.

Chairman ABOUREZK. That's right, if you implemented the management study, it doesn't really matter where the agency sits. It's got to be implemented anyhow and then it's even much better if you draw out the agency and put it out as an independent sort of thing away from the Department of Interior. So I think you're right and that there's no logic in what the critics of the management study are saying.

Is it true, I heard this, maybe you can verify this, that the area directors grabbed the management study as soon as it came out and said start showing it to the tribes and say look here, this means termination? Is that what they were spreading around about the management study?

Mr. STEVENS. Yes; they had a special meeting immediately after the release of the report and it was interesting because initially, their attitude was that we were "doing nothing" over here. So when they saw the management study, they had to get together and discuss all over again what they were going to do.

The upshot of that meeting was a letter which I had but I don't have available, from the Commissioner either to the Secretary's office or to the field. This sort of action is an example of what goes on in the Bureau. They said, now, we want everybody to understand that this BIA management study was done as an independent study. It has not been endorsed by the American Indian Policy Review Commission nor by Congress, so what we should do is sit back and wait and see what happens.

OK, well, that's well and good. But they put out an RFP (a request for proposal), to order up the machinery for the computer systems.

Chairman ABOUREZK. Recommended in the management study?

Mr. STEVENS. Yes. And we have a problem with that (at a later point, Chuck Peone can discuss the technical details since he's familiar with it). The management study recommends a management information system be set up in the Department of Interior that can be made accessible to tribes for their use. This can be done rather easily. The problem is that the system the BIA is installing is something they've had on the shelf right along. It is not in accordance with the management study team's recommendations. It is obsolete now.

Mr. WHITECROW. Mr. Chairman, realizing that what we are doing here is taking a look at this whole entire Federal administration and its delivery system. These past few days we've been discussing the sovereignty of a tribe, we've been talking about the jurisdictional processes and the trust relationships of the Federal Government and I believe each of these subjects are most appropriate for what this entire Commission is about, also realizing the importance of the Federal administration, its structure, the management review that we have done on the BIA and also understanding that Indian tribes are wanting a return of their powers, a return of the authorities that they need to make decisions on their own, and we've also discussed changing some jurisdictional processes and recommending the change of some laws, particularly that in relation to trust responsibility whereby a tribe could perhaps overrule the Secretary in a decision.

I would like to insert into the record, if I may. Our historian, D'Arcy McNickle, and a book that he wrote, *They Came Here First:* I would like to read, if I may, the preface to this book to set the stage for the discussion of this day's activity insofar as this Commission is concerned.

The preface of this book I think is most appropriate to what we're talking about here and the fact that regulations are established and as a result of these regulations, delivery service of personnel go down to the American Indian.

The preface reads as follows:

> Trouble had come to one of the Hopi Indian villages. The people had been refusing to dip their sheep. They had even refused to count their sheep. These were matters which expert range managers considered important. Worse than that, since this was war time, these Hopi Indians had refused to register for selective service and neither would they sign a paper saying that they had religious scruples against taking up arms.
>
> These peaceful people, as their name signifies, were causing serious trouble. It was necessary to find out why and to remove, if possible, any causes of just complaint. The Government official drove up the Mesa Road—perhaps it ought to be explained that the Hopi Indians live in Arizona and what on most maps is a blank expanse between the arms of the Colorado and the Little Colorado Rivers, there are three mesas like the fingers of a hand on which the Hopi villages crouch in the sun.
>
> The land itself is the Northwood Running Black Mesa which breaks into the wild country of the San Juan River. The Government official had to ask why these things were. Perhaps it was a misunderstanding. He was there to make things right.
>
> The speaker for the village had come from the fields in workclothes but he honored the official by slipping a pair of store trousers over his earth-stained dungarees. The afternoon wore into evening while he talked to the things that troubled the villagers. As he talked, the troubles which were in his mind, settled upon the mind of the Government official and he, who had come to explain away doubt and misunderstanding, found perplexity instead.
>
> The Hopi spokesman was never cantankerous. His voice was not even sharp but his questions had a terrible urgency. He said when the Hopi people came from the underworld, they found people living in this land before them. These people had been living here a long time ago and they know many things about the world and the right way to live.
>
> Our Hopi people went to them and said we would like to live here with you. They replied, all right, you can stay. We have certain rules here, ways of living, and you will have to follow these rules, then there will be no trouble. That's how it was.
>
> The Hopis did as they were told and they never had trouble. After awhile, the White men came. They did not ask if they could live with us, they just moved in. They did not ask what our rules were. Instead, they wrote rules for us to follow. Now you just obey these and you won't get into trouble, they said. How do you explain that?

He did not wait for any response. There were too many questions yet to ask. Why do you put us in jail? He was not a large man but he spoke with such gravity, one felt that he was indeed a man of strength and weight. In our Hopi life, we have had bad people who did not keep the law, who went against the rules of the village. We had our ways of controlling these lawbreakers without putting them in jail.

Now you bring us laws and rules which are not even our own and then you send us to jail for not obeying them. How do you explain that? Still he went on. Now we have a drought. It has been 4 years and seems to get worse. The rains come less often. The grass is dying everywhere.

You tell us we will have to give up our sheep. They are the only food we have yet you say we will have to give them up. Is this sensible? The sheep did not stop the rains. It is you who have caused that. You make regulations for us and our children. They must go to school. We must dip our sheep. We must count our sheep. We must write our names on papers we do not understand. You say it is to get sugar or to fight a war we know nothing about.

You have put so many of these regulations on us that we are confused. We are not able to concentrate on the things that a Hopi must do. The ceremonies he must do and the thoughts he must have. This is why it never rains and why the grasses are scarce.

Before we had more sheep than we have now, yet no one suffered. That is what I say.

When the Government official came away in the dark moonless summer night, he thought of all the answers which an intelligent, civilized official must give in defense of his creed and his position. He even wrote them down on paper when he got to a lighted room.

But in the morning when there was sun again, the written answers did not suffice. Nothing that had been written before by white men would suffice either. I was present at that conversation on the mesa and I tried to find answers to the questions. As it turned out, there were hundreds of questions. One led into another and gave the mind no rest. How did it happen that these Hopi Indians after 400 years of sharing their ancient land with invaders from another world, were not crushed? How was it that they could stand off unhurried and ask the white man to explain himself? This was not the vanquished and the vanishing American. Here was a living voice and a competent voice asking the white man to justify his works. This was not what one read in the books.

To explain it, I discovered one had to start way back and explain the Indians. Where did they come from and when and how? What was it like when they first came into the land? Where did they make their homes? Perhaps if one really tried, one could visualize something of what it was like. One ought to try. It was important.

That concludes the preface of this book and I would like to make just one further comment that I think this Commission should certainly take into account. These kinds of cultural backgrounds of these kinds of drastic changes to those kinds of drastic changes to allow the Indian people to become once again users and acquirers of their culture, of their language, and of their way of life.

As a country, the United States of America needs to wipe a black mark out of its history and to once again allow the native peoples of these United States to begin assuming once again, asserting those things that made them so great insofar as their relationships with one another are concerned.

I think as we enter this realm of study of determining the Federal relationship and the Federal structure, we need to take into account that total application. Thank you.

Chairman ABOUREZK. Ernie?

Mr. BORBRIDGE. Mr. Chairman, I recognize at this point, Mr. Chairman, that we are not only taking a look at the whole Federal delivery system but really discussing as a very important element, the Bureau of Indian Affairs Management Study which has been completed for and at the direction of the Commission.

In order to bring the matter properly before us and in order to have the Commission on record with respect to that study, I would move that the Commission adopt the Bureau of Indian Affairs Management Study with the understanding that the staff would be bringing forward a schedule for implementation of that study.

Mr. WHITECROW. Mr. Chairman, I second that motion.

Chairman ABOUREZK. All right. There has been a motion made and seconded to adopt the Bureau of Indian Affairs Management Study. I want to, if I might, offer as an amendment to that motion that some documents handed to me this morning by the staff that include a Bureau of Indian Affairs organization chart, several exhibits which delineate the funding sources and recipients of those sources broken down by area offices, exhibits 1, 2, 3, and 4, be made a part of the appendix of that management study.

These are apparently factual data. Ernie, may I ask you, where were these obtained from?

Mr. STEVENS. From the management team. They didn't include it in the study.

Chairman ABOUREZK. OK, so it can be properly included in the appendix?

Mr. STEVENS. Yes, sir.

Chairman ABOUREZK. I just offer that as an amendment to the motion and ask if you will accept that as an amendment.

Mr. BORBRIDGE. All right.

Chairman ABOUREZK. All right, there is a quorum present this morning. I think we'd better do this by rollcall to show the quorum because this is an affirmative action that we are taking.

Mr. BORBRIDGE. Mr. CHAIRMAN, prior to the vote, my intent at this point is that I fully realize as the Commission proceeds that by virtue of various other reports and recommendations, we may very well modify this motion if it is adopted and I recognize that.

Chairman ABOUREZK. It is possible to do that. The Commission can override itself or reconsider this at a later date but I think I'm appreciative of your motion and the support for it since I think it's important to show that we are making a great deal of progress and that we do have this management study that is a fairly final form. It's not like the other—yes, it's been printed as a committee print for the Senate by the Government Printing Office?

Mr. STEVENS. Government Printing Office.

Chairman ABOUREZK. And I might just add by way of colloquy on this, I have been in touch with Carter's people who were handling Indian affairs for him during the campaign. We sent them a great deal of information of the work of the Commission as well as the management study and they indicated that as sort of the management study specifically that jived right in with their reorganization program and so I think it's especially important that we make this an affirmative action this morning as the Carter administration starts to get into gear.

So unless there is any other comment, the clerk——

Mr. BRUCE. Does our action here fit in with what you are going to be doing now? You still will come back and go over the points, won't you?

Mr. STEVENS. Yes, sir.

Mr. BRUCE. OK.

Chairman ABOUREZK. The clerk will call the roll.

Ms. DUCHENEAUX. Commissioner Borbridge?

Mr. BORBRIDGE. Yes.

Ms. DUCHENEAUX. Commissioner Bruce?

Mr. BRUCE. Yes.

Ms. DUCHENEAUX. Commissioner Deer?

Ms. DEER. Yes.

Ms. DUCHENEAUX. Commissioner Dial?

Ms. DIAL. Yes.

Ms. DUCHENEAUX. Congressman Meeds?

Congressman MEEDS. Aye.

Ms. DUCHENEAUX. Commissioner Whitecrow?

Mr. WHITECROW. Aye.

Ms. DUCHENEAUX. Senator Abourezk?

Chairman ABOUREZK. Aye.

Ms. DUCHENEAUX. Seven.

Chairman ABOUREZK. The vote is seven in favor. There are no negative votes. The motion as amended is agreed to and the record will show that seven members are present all voting aye and the others were not present and therefore did not vote.

Ernie?

Mr. BRUCE. Mr. Chairman, may I make a comment first because I've been getting telephone calls since 6 o'clock this morning.

Chairman ABOUREZK. On Sunday morning, you are entitled to comment on that.

Mr. BRUCE. You are not going to recommend the abolishment of the Bureau. I think it should be pointed out here and let me say first that I'm delighted with the action. I never thought it would come this soon; we've got a lot of work to do.

I wanted to say that this is one of the reasons why I accepted the honor of being one of the commissioners because of this study. As many of you know, I did my best with a team of people surrounding me to make changes in the Bureau. I knew it was inefficient; I saw how it functioned as an inefficient organization.

I think people should understand our people, the Indian people, that we're not trying to abolish the Bureau itself. We are trying to move it somewhere where it can be efficient. I think I said the other day that an Indian commissioner can't function and do right by his own people as long as he doesn't have the full say, as long as he has to report to the Secretary of Interior. They have those powers and authority.

So the Bureau of Indian Affairs and whatever we set out to do and that's in the separate organization, will include a corps of employees of the Bureau of Indian Affairs. As we go along, I am sure we are going to be facing some of these issues and as we do, I want to point out some of the personal experiences I had in trying to carry out and making the Bureau a more efficient organization.

So I think we ought to go over this carefully even though we have passed it. The key to all of it, and you know that 75 different reports have been made over the years, is that none of them have been implemented. So that's the key. Can we implement this report so that it can be a more efficient organization?

This is the strongest, largest, toughest bureaucracy in the Government. I know how it functions. Before I even had words out of my mouth concerning an area office, the word went out through the whole country and everybody began to put on their skids and hang on and drag their feet and set up organization meetings to combat what we've tried to do and it was sad from my standpoint to move out of the Bureau and not be able to accomplish the things that I felt were necessary.

In joining the Commission with support of the Commissioners, I am delighted to have this action take place and I want to do all we can but I want to point out again that how we implement this is the key. I don't think the general Indian public ought to be afraid we are going to wipe out the Bureau completely because we need to take a good look at how that organization functions in Government efficiently.

Chairman ABOUREZK. Well, it seems to me, Louis, that in my reading of the management study, it does not abolish the Bureau of Indian Affairs. What it does is, in effect, conforms the Bureau of Indian Affairs to the statements on self-determination that every Indian tribe in the country has made.

It says that the Bureau will revamp its organization, make itself into a technical service agency to assist the Indian people at budgeting, and other programs will be done largely by the tribes themselves with whatever assistance they need from the Bureau.

It seems to me that that is what the Indians have wanted from the Bureau. They haven't wanted the Bureau to be their daddy and mama all at the same time—which is what it's been—and it will allow the tribes, it will give them more freedom and with greater assistance than they've ever received from the Government.

So those people, the politicians and the Bureau who were trying to do their best to discredit this Commission and the management study itself, are not telling the truth when they go around saying that. I think you brought up a great point and I appreciate that.

Mr. WHITECROW. Mr. Chairman, I would also like to comment on some of the words that Mr. Bruce spoke to make this Commission aware of also what happens out there at the very lowest levels of the delivery of Federal services. I have been on that particular end of delivery of Federal services. I have also been at that particular end at the time President Nixon announced his self-determination policy on July 1970, attending the first intertribal council of eight tribes in northeast Oklahoma urging the tribal leaders at that particular meeting to begin looking at self-determination with an affirmative viewpoint—and at the same time, having seen the same tribal leaders being confronted with employees from within the federal system, denouncing that particular policy and also preaching the fact that it, in effect, was termination and that they should be very, very fearful of a new determination policy because of the word termination within the word determination.

The attitude of those employees at that particular level was such that they individually and collectively were fearful of their jobs—fearful of losing their particular positions. I think this is something that we need to be very, very careful of and the fact that Indian people be made aware that these things happen from a political standpoint even there at the local level and can throw cold or hot water upon the Indian people in regard to any change. They can also apply pressures by indicating to those people who have children in school that if you want your children to stay in school, you'd better not approve this particular policy because you are going to lose it.

Those kinds of our fears are impressed upon the Indian people daily out there and we must, in this system, in this change, provide that those employees functioning at the very lowest level, understand totally what the trust responsibility of the Federal Government is—that they are liable for the delivery of that trust responsibility and the fulfillment of the Federal Government's trust responsibilities and its relationship with the American Indian not just for their own enjoyment and not for their own future.

They are there to help the American Indian, not to hold him back, not to put more obstacles in it and their interpretation of rule and regulation is most important. I think if we can cover this, then our system will work.

Chairman ABOUREZK. It's been suggested by John Borbridge for the benefit of all the Commissioners when they go back to their particular constituencies that an explanation might be required of them of what the management study does.

I wonder, Ray, if you might be able to put together today and tomorrow, a very brief, simple, clearly written, easy to read analysis of what the management study requires, and state what it is and what it is not. In fact, it is not termination and it is a reorganization of the Bureau and provide that to all the Commissioners so that there will be a uniform policy statement on the part of the Commissioners and if we can have that before we adjourn and everybody leaves town this week.

Mr. GOETTING. Yes, sir.

Mr. STEVENS. Mr. Chairman, one of the things I wanted to tell the Commission just so that we have it clear and on the record is one of the chief criticisms against the management study. I have an idea of where it came from. It is that it doesn't deal with the trust and just for the record, this was not meant to deal with the trust. It was meant to deal with management efficiency. That is, specifically——

Chairman ABOUREZK. Procedural issues?

Mr. STEVENS. Yes, sir. Personnel management, information systems, and organization. It was not to deal with the trust at all. In this, we are merely talking about management efficiency and information and the handling of personnel and budget.

Chairman ABOUREZK. That should be included in the statement as well, Ray.

Mr. GOETTING. Right.

Chairman ABOUREZK. OK, Ernie, go ahead.

Mr. STEVENS. I will read the principles that we arrived at and then we'll go back to each particular section. The first one will be budget. There is a consistency between the findings of the Commission task forces in numerous contemporary expressions of Indian opinion.

Chairman ABOUREZK. Page 71, right?

Mr. STEVENS. Yes, sir. Expressions of Indian opinion have been stated through tribal resolutions, nationally and in organizational resolutions and policy statements as well as an examination of previous Indian opinions since 1900. Further consistency in agreement is found as evidenced through an examination of countless management, technical programs, and budget reviews completed by private and public agencies. The Commission staff concurs, based on its own examination of the various obstacles from the delivery of programs and services.

The staff, therefore, recommends the adoption of the following general principles which will provide guidelines for the recommendations of the American Indian Policy Review Commission which would result in an adequate Federal delivery system for Indian tribes.

One: Fundamental change and Federal administrative reform be proposed to express the intent of Congress and the desires of Indian people. The exchanges must be conceived as a rational process over time rather than an event with primary emphasis on Indian consultation and input.

Two: You already dealt with this—the Commission should fully endorse the BIA management study recommendations and further recommend to Congress that a positive vehicle be enacted to expedite the proposed implementation of these recommendations.

A specific implementation plan will be proposed as a necessary first step in the process adhering to the following principles:

The BIA budget system be modified and improved to include tribal needs, assessment priorities and goals designed for long-range planning by tribes at the local level and placed in the proper perspective of the total Indian budget.

The BIA personnel system be modified and improved to incorporate the legal intent of the law regarding Indian preference, by providing management skills and training to meet the needs of Indian people at the local level.

Improvements include developing a separate Indian services discussed in section B——

Congressman MEEDS. Mr. Chairman, can we have a little more indepth discussion of that proposal?

Chairman ABOUREZK. You can stop him at any time.

Mr. STEVENS. Yes, sir. Yes; there's an entire section of this. Would you like to go over to that one?

Congressman MEEDS. No; you don't have to go over the entire section. Could you give us a little broader stroke of the brush there? What page are you talking about in the report first?

Mr. STEVENS. It's page 54, section D. Wait a minute, section D is page 49. It's "Federal Delivery Systems Under Indian Preference."

A good part of that basis has been found in the recommendations from task force 9 related to the Bureau of Indian Affairs and the Indian Health Service. A summary of those recommendations is consistent with the findings of the BIA management study and task force 9's analysis.

Management reports on a consensus of Indian opinion identifying the adoption of the following broad principles in Indian Career Service should be established—distinct from the Civil Service Commission with the following attributes and goals:

Eliminate the institutional barrier created by the discretion of the Secretary of the Interior and the Civil Service Commission.

Standardize and define meaningful employment of Indians and programs for the benefit of Indian people.

Project and enhance the development of tribal self-government through training and development of personnel systems.

Provide a realistic mechanism for tribal governments.

Assume control of Federal programs.

Assist tribal government in developing workable personnel systems in line with Federal-Indian program services by utilizing standardized personnel systems designed to meet local community goals.

Develop personnel criteria whereby non-Indian applicants could function under excepted appointment.

The Commission directed the staff to prepare a specific plan. I wanted to say that a part related to the recommendations made by task force 9—I know I have personally supported this for some time—is that the relationship by the Bureau of Indian Affairs and the Indian Health Service with the Civil Service Commission is, in fact, illegal.

The 1934 act specifically provided for a separate service and, as a matter of fact, in 1953 or 1954, Felix Cohen, who was the Solicitor of Indian Affairs, at the time, wrote an article in the Law Review in which he said the Bureau of Indian Affairs was 90 percent in violation of the law.

When Mr. Bruce and others, including myself were in the Bureau, we were preparing recommendations related to a separate Indian career service, but because we had announced full implementation of preference as a policy and knowing the kind of problems the separate service idea was going to get into, we decided to fully implement the preference at the first light.

Whatever happens, I think that one of the main reasons I would support a separate service is that it is not that unusual. It would be unusual in that it would be predominantly Indian. Curiously enough, the system of using an excepted service for Indians was discussed in 1934 in hearings and was specifically dealt with as not being appropriate for hiring Indians.

Since then, the Civil Service Commission and the Department of Interior have decided to use the Civil Service Commission which is in violation of the law. The specific wording in the law says "without regard to Civil Service." There have also been a couple of court cases—

Let me read the law. "The Secretary of the Interior is directed" and it doesn't say shall or may "to establish standards of health aids, character, experience and knowledge and ability for Indians who may be appointed without regard to civil service laws to the various positions maintained now or hereafter by the Indian office in the administrational functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions."

I believe there is further discussion in the case law—the *Freeman* case—the *Mancarri* case. I also believe there are self-limitations on the ability of the Secretary to use any kind of discretion.

Now, the case law has tightened it up even further. Fundamentally, the problem with the Interior Department and Civil Service can be dealt with rather easily. However, as a former Federal administrator, I can say there is a disinclination on the part of the executive departments to recognize that law stands over Executive orders.

Whenever you ask them and argue with them about it, they always point out Executive order so and so or such and such. The fact of the matter is, the 1934 act supersedes any attempts by the executive department or anybody else to utilize an Executive order or administrative act to change the law.

Chairman ABOUREZK. What are you recommending now that the Indian Commissioner do with regard to Indian employment? Can you give us just a list? Tick them off one, two, three. What is your recommendation so far as employment in Indian preference?

Mr. STEVENS. We are just recommending that the Secretary——

Chairman ABOUREZK. How would it be implemented?

Mr. STEVENS. Pete can answer that.

Mr. TAYLOR. I was the chairman of Task Force 9 that examined this problem at some rather great length. Our specialist on that task force, Karl Funke, had previously written a law review article on the subject analyzing the 1934 act very exhaustively and Karl carried the main burden in developing the picture on this thing for our task force.

At page 49 here in the book, there is a reference to our task force report and the page numbers where the detailed analysis of this is contained and I think probably to get a detailed picture of the problem, you would have to read the task force report.

Chairman ABOUREZK. Well, Pete, what we would like to know is, we assume the legal authorization is there, it's not that we're going to make it there so far as new employment practice is now.

What I'm asking is: What do you recommend by way of procedure for accomplishing Indian preference?

Mr. TAYLOR. I'm sorry, I was just making an introductory statement to try to get to that. Our recommendations appear on pages 51 through 54 and I would just like to point out a few of the major ones which I think will respond to the question you are asking me.

On page 51, there is the recommendation—I should preface this by saying as far as we're concerned, the law is essentially adequate at this time certainly as far as the Bureau of Indian Affairs and the Indian Health Service is concerned because they are both bound by section 472 of title 25 which Ernie just read to you.

So recommendation No. 1, I think this Commission should recommend to Congress, to the appropriate committees of Congress, that oversight hearings be held over BIA and the Indian Health Service to find out why they haven't complied with the preference laws. Why a separate Indian civil service has not been set up. This was dictated by Congress 40 years ago.

I happen to know through conversations with Reid Chambers who was the associate solicitor for Indian Affairs, he's been grappling with this problem over the past year. Karl and I had several discussions with him and Reid Chambers agrees that the law does require separate Indian service.

Apparently, this was agreed upon even as early as 1971 and I think Harrison Loesch was involved and Ernie, correct me if I'm wrong, didn't Harrison Loesch agree that a separate service was required?

Mr. STEVENS. Commissioner Bruce was there.

Mr. TAYLOR. So what we recommend here are oversight hearings to find out why they haven't done anything or what they are doing now to comply with the law. I believe there is movement afoot down there to try to bring themselves into compliance.

At the very top of page 52 in the first recommendation there, I will read this paragraph——

Chairman ABOUREZK. Pete, you won't need to read that because everybody up here will be able to read it themselves. What we're asking for is a capsule summary, one, two, three, four. What are you recommending by way of implementing Indian perference?

Mr. TAYLOR. First, we recommend the oversight hearings. Second of all, we recommend that Indian preference be extended to every Federal agency which is delivering any programs to Indians.

Chairman ABOUREZK. All right.

Mr. TAYLOR. That was the original intent of the act anyway but because of the way——

Chairman ABOUREZK. How are you going to—let me rephrase the question. What are you going to do to train and make certain that the requirements of the law are fulfilled as qualified that Indians be taken into the Indian service?

Mr. TAYLOR. I would amend section 472 to extend it to all Federal agencies as step 1.

Chairman ABOUREZK. Once you've done that, then what are you going to do?

Mr. TAYLOR. There should be a lead agency that administers the separate Indian civil service. Any person in any Federal agency who is involved in a program that is specifically related to Indians should probably undergo a training procedure under the aegis of whoever this lead administrator is.

In this thing here, we're saying that the Secretary of Interior should be the lead person. Now obviously, if a separate Indian service is created or a separate Indian agency, that lead burden would shift to the new agency but there should be a training program.

We have, in the Department of Commerce, the Economic Development Administration and the Office of Minority Business Enterprises. In the Department of Agriculture, there are specific Indian programs, and also in Small Business Administration. Congressman Meeds, I know you've had correspondence with SBA asking about some of their policies.

I think that correspondence reflects the lack of sensitivity and awareness that would require this sort of training of these people so that they understand really, what Indian affairs is all about.

Mr. WHITECROW. Mr. Chairman. Pete, I'm wondering whether or not it would be better to hold oversight hearings by the Congress on this or whether it might be better to ask the Secretaries to come before this Commission and to explain why Indian preference was never implemented. Is this not one of our charges?

Mr. TAYLOR. The Secretary of the Interior would probably be the appropriate person and a man named Hampton with the Civil Service Commission. I don't know whether he is the director of that Commission or just what his position is but those two people would be the most able to explain this problem.

Mr. WHITECROW. Would that not be one of the charges as I see our responsibility in this law? This is one of the major areas of study and I'm just wondering why we did not get those people before this Commission to respond to those types of questions.

Mr. TAYLOR. I'm not sure I can answer for the Commission. I think it might be wise to bring them up, yes, to explain this. I think I have to leave this for the Commissioners to discuss among yourselves but certainly, either this Commission can recommend to Congress that they have the oversight hearings or this Commission itself can hold it.

Mr. WHITECROW. Mr. Chairman, I would like to hear some discussion among the Commissioners here as to what their feelings are in regard to this. I think this is a very important issue. If we find that direction of Congress has been really put aside for 40 years and I think we should certainly find out why this has been done.

I would like to hear some discussion of the other Commissioners in regard to this.

Chairman ABOUREZK. Well, until another Commissioner wants to speak on it, I'll just give my own view on it, Jake.

I think at one time, it might have been appropriate for the Commission to call the Secretary and make him explain why. I think it is late in the session right now for that kind of thing to take place so far as we are concerned, for a couple of reasons.

We already know approximately what our recommendations are and that is kind of what our task is, to make recommendations to the Congress so far as implementing Indian preference. That's what we're trying to get straightened out now.

So therefore, it's kind of beyond the pale of the Commission to try to get them up and have them explain why they haven't done it. We could tell them what to do which is what we're going to do with this report but so far as now hauling up a guy who is just about to go out of office, Kleppe, I'm not sure whether we would be productive there.

I think we would be much more productive by waiting until the new Secretary comes in and when he comes up for his nomination hearings, if James Abourezk over in the Senate Interior Committee lays in on him and asks him what he intends to do about Indian preference, it might be an awfully lot more effective.

That's my own personal view of it and I don't know what the rest of the Commissioners think.

Commissioner BRUCE. Mr. Chairman, I would like to say this. We've had a lot of authority in the Commission and we've had a lot of opportunity to, oh, I suppose subpena if we wanted to, different people. There was a time when I think and I'm sure all the Commissioners would have liked to have had an opportunity to fire some questions at these Secretaries and not the guy who sweeps the hall.

It's important that they know that we had this right. I don't like people saying well, you guys had the right to subpena and you never did. That was one question this morning. So if you think that this is the right procedure and I agree that we are bringing before this group now, lame ducks, really, and the procedure is to fire away at you and their committee at their confirmation, then I go along with that and I want it on the record that I've always felt we did not use that.

We didn't get all the information we wanted from those people. Even I was told, we're not going to give it to you, we don't give a damn what you say about the subpena thing and that gripes me because we didn't use it to the fullest and we'll never get another chance from the Indian Commissioners' standpoint.

I want it on the record that I'm not happy about the fact that we didn't carry out this authority that we had.

Commissioner DIAL. Mr. Chairman, Commissioner Bruce, you still have time even after January, if necessary, after January the 20th, when, of course, I guess the new Cabinet will have been chosen, at least we'll know who they are but the life of the Commission is until July 1 and even when the report is finished, if it's necessary to subpena, you could do it up until July 1, couldn't you?

Chairman ABOUREZK. Yes, if we are still in session, you could.

Commissioner DIAL. Do you officially adjourn before July 1?

Chairman ABOUREZK. I don't think so.

Commissioner DIAL. You are alive until then, therefore, you would have subpena power. It would seem to me you would.

Chairman ABOUREZK. It is one thing for us to say that we should have done it earlier and we didn't and perhaps we should have but it's another thing to say we're going to do it just to exercise our power. We ought to have some tangible benefit in order to do it.

Commissioner DIAL. If the new Secretary didn't cooperate, you could deal with him but he will probably be a very good man.

Chairman ABOUREZK. The time to get to those people is before their confirmation.

Mr. TAYLOR. Mr. Chairman, if I could make a comment here. Mr. Bruce, I know that the Indian community is quite concerned about the fact that this Commission has not used its subpena power. In some ways, you know, I think staff had something to do with this because we were concerned about having ducks in a row before you bring a person up to testify.

But I would like to say this. I think it's important that the Indian community know that the subpena power has not been wasted. One of the very first things that happened when I came up to the Policy Review Commission was that we tried to get some documents out of the Department of the Interior and Interior simply said no.

Ernie wrote an extremely strong letter to Dave Lindgren who was then the Deputy Solicitor and apprised him of the fact that we did have subpena power. It's my understanding that the special assistant to the Solicitor was heard running up and down the halls of Interior the next day saying, my God, I didn't know they had subpena power, and we got those documents within 7 days.

The same thing happened with the Indian Health Service in obtaining a lot of information there. There was a lot of foot dragging going on and a letter was sent and this is a part of the Commission records that will be on file but our letter was sent to the Secretary of HEW apprising him of our subpena power and we got that information.

Subpenas may not have been issued by this Commission but the subpena power was in fact used and I think that it's important that that be on the record.

Commissioner BRUCE. Are you saying to us now that you got full cooperation from all of the Federal agencies?

Mr. TAYLOR. Not at all. I don't mean to imply that. But I don't want—I don't think it's fair for this Commission to be criticized for not using its subpena power. I don't think it could have been used. This Commission was not established with a sufficient lifetime to actually use the subpena powers if we have to have information that is really necessary. Every one of us knew that when this Commission started.

What I am trying to say, I am trying to answer the concerns of the Indian people and the criticisms that are being thrown at this Commission because in fact, the subpena power was in fact used. It was the threat of it and telling people, by God, we got this and then we got some cooperation.

No, we didn't get all the cooperation we needed, not at all, but the subpena power was not a wasted thing. It was used. That's what I am trying to establish.

Commissioner BRUCE. Ninety percent, seventy percent, minus ten, what? Where do you figure it? Would you say 75 percent of the agencies cooperated?

Mr. TAYLOR. No, I don't think I would care to put that kind of figure on it. From my own standpoint, my experience is relatively good except for this very first instance and with the IHS, there was foot dragging going on.

In fact, what happened there was, well, the Indian Health Service was trying to get figures for us out of their area offices. We found problems there, administratively, and the fact that they didn't have records immediately available, even though their own procedures said that they should have them, that's one area of oversight that could be gotten into.

But what happened was that once that information started being collected, the Secretary's office got involved and all of a sudden, all of that information was getting political screening through the Secretary's office at HEW and rewritten into softer terms, consolidating figures so the things weren't so black and white of the actual situation.

No, I don't want to say that we got good cooperation but I do want to say that the subpena power was not a wasted thing. I am trying to say this in the interest of this Commission.

Chairman ABOUREZK. Thank you. Let me close this portion of our discussion off. I think we ought to get back to our deal just by saying that I can't recall and I've been in Congress 6 years, 2 in the House and 4 in the Senate, and I can't recall ever using this subpena power or issuing a subpena out of a committee in all that time, even though the power was there and I think as Pete said, the knowledge that we have it is sufficient in most cases.

So I think it is short-sighted on the part of those critics who have complained to you, Louis, that we haven't used it. I just don't think that because you have a gun in your pocket, you ought to shoot at somebody with it. It just doesn't make that much sense to me. If you need to do it, go ahead but we really haven't needed to do it and if we had wanted to call the Secretary of Interior, I think we could have done it without the subpena anyhow.

Commissioner Dial. Just one other remark. I believe the first time I met Mr. Taylor, it was pointed out that he needed some very important documents and had we not had subpena power, I don't think he would have been able to have completed his study. Right, Mr. Taylor?

Mr. Taylor. Yes, that is correct, Commissioner.

Commissioner Dial. And at that time he was not even hired.

Mr. Taylor. That's correct, too.

Commissioner Deer. This subject has interested me a great deal. The attitude and the cooperation of the various Federal agencies in complying with our request for information and I would like to have staff's assessment of some of the major agencies if they have been cooperative, if they haven't and what are the reasons and what are your interpretations of their actions?

Mr. Stevens. Periodically, I guess the major problems were in HEW. We had some problems with the Interior Department. Surprisingly enough, we didn't have many with the Bureau. We have a recent thing regarding a request we initiated with the Interior Department on May 8th, 1976. We are still waiting for a reply. We are on our second letter saying "for the second time, stand and deliver."

One of the major problem areas we had with HEW, was in their General Counsel's Office. We requested some preference materials and personnel information from Indian Health Service. I had the feeling that the General Counsel's Office or other parts of HEW were interfering. The people at Indian Health Service didn't tell us that but we heard rumors. So while we can point at the Indian Health Service and say it took them a number of months to provide us with certain information, I have a feeling the other parts of HEW were interfering.

We had a specific occasion in which the General Counsel's Office just took us on and as we have pointed out, many of our battles were not public. It took a sharp letter from me or ultimately Senator Abourezk telling an agency to stand and deliver. That was the time they usually honored our request.

The reason for this attitude, I believe is that they knew we were a joint Commission with a short life. They knew that by laying on us, they could delay. Initially, the Federal agencies thought the task force reports were the commission report in fact. So they all told each other, "Well, just lay on them for a year. By the time they get the information, they won't be able to use it anyway."

Then when they saw it was going to be a longer period of time, they took a different tact. Then a whole process began . . . it wasn't just the agency being late responding and you reminding them and then their complying with the request. A whole series of letters and/or telephone calls takes place. The General Counsel comes down to visit and then sends a representative to talk it over. The legislative liaison comes over and so on and so forth and when it's all over, you get what you requested eventually or else they give you what you want and leave out something that's absolutely key and maintain they didn't understand you. Then the ritual dance starts all over again. That's the problem.

The principal problem has been that the Commission has a short lifetime.

Now curiously enough, one of the areas we had terrible problems with was not the blame of the agencies. There is no agency in the Federal Government, not GAO, not OMB, not any department of Government, that can define the Indian budget. That's the most significant part of the budget report which we have been working on internally and we cannot deliver because nobody can give us accurate information.

A General Accounting Office report is a crazy domino thing. Somebody dreams up some figures and passes them on to somebody else and that person takes off on them with the results being that the latest General Accounting Office report on the Indian budget was taken from department estimates.

The Federal Government cannot account for the Indian budget. So when an administration says how much money there is, it isn't accurate because it doesn't know. What's more, it can't account for the money after it has been allocated, to my shock and dismay, as some of my friends say.

One of the area offices in the Bureau of Indian Affairs does not even account to the central office for what it expends. In fact I found out through one of their people, that the central office ordered this area director to release the information and he refused.

As a matter of fact, there is no accountability in the Federal Government for Federal expenditures for Indians and so when we ask for information, it isn't just a matter of calling OMB. We went to the Office of Management and Budget and asked for the Bureau budget. We went to the Bureau to ask for the Bureau budget. The two agencies couldn't reconcile their figures within $20 million.

So the most significant gripe concerning our budget material is nobody knows what the budget is and even when you get into line items, it's just incredibly hard to keep up with.

So in the case of the budget and a few other items, the Government, any part of the Government, including our own arm, the General Accounting Office, cannot give us accurate information.

Mr. BRUCE. Mr. Chairman, as long as we are assured that the Congress will implement these recommendations, I'll be quiet

Ms. DEER. Mr. Chairman, I specifically would like to get some comments on the Department of Justice. What kind of cooperation did you get from Justice?

Mr. TAYLOR. Commissioner Deer, i I could respond to that? I had relatively little dealings with Justice but I did work with a staff member who is not with us anymore that was over at the Department of Justice trying to gather information.

The Department of Justice, I think, is one of the great obstacles in the Indian Affairs, particularly in litigation and getting legal rights recognized. I know you had your own problem with them on the Menominee Reservation with respect to whether or not Menominee was within the coverage of Public Law 83–280.

The Department of Interior took the position that Public Law 280 did not apply to your reservation and the Department of Justice refused to acknowledge that position. That I cannot understand. The Attorney General of the State of Wisconsin was sufficiently supportive of your position that Wisconsin, as I understand it, retroceded whatever jurisdiction Justice insisted they had.

So finally, you got around the obstacle of Justice. Rudy Ryser, I think I'm pronouncing that name correctly, was trying to find the groundwork for hearings, you know, to get to the subpena thing and bring some people up here that could respond to matters.

Then Rudy went over to talk to ground level personnel because that's where the problems are known and if you can't talk to those people, you can't really find out what it is you need to find out and what you ought to be issuing subpenas for.

It was an office below that of the Attorney General, a Deputy Attorney General or something, got wind of the fact that Rudy was talking to these people and insisted on having a representative from his office, a political level appointment, sit in on every interrogation or question period.

Obviously, a chilling effect because no low-level guy is going to reveal the problems of his department or he's going to find himself stationed in Sitka, you know, it's that simple. There are many problems. There were substantial problems out of the Department of Justice.

We had a situation that we discovered in Oklahoma. It was the Larry Black, Jr. case where this young Indian boy was arrested by local police and after about 2 weeks, psychiatric evaluations were—you know, there were no suicidal tendencies found in this kid at all. He was looking forward to getting out then and he's found hanging in his jail cell.

The parents obviously were just distraught and tried to get FBI cooperation in at least take a look at this thing to find out what had happened because they didn't believe it was a suicide. There was a very bad problem in getting the FBI to investigate this. In fact, I don't think they ever did do it until it was obvious this Commission was beginning to bring pressure.

Chairman Abourezk sent a letter to the Attorney General asking for a full explanation of that case and the policies and procedures followed by the Department of Justice in investigating these kinds of cases. This was another instance where we were preparing to issue a subpena because the response from Justice was delayed and delayed.

We finally did get a response just about the time we were prepared to come back to Senator Abourezk or Chairman Meeds and ask to get subpenas issued. We've had delays out of these agencies but—have I answered the question that you're asking?

Commissioner DEER. I want it in the record, some comment about the Department of Justice. I would just also like to say that I feel our time was short and I was very interested to learn that during your 6 years, Senator Abourezk, no subpenas had been issued but I feel that we have had this power and I feel some distress in not being able to call before us the responsible official.

I realize we are in a change of administration and that new people will be coming in and I think it's unfortunate that we're not going to be able to call in the people that have been administering these policies and causing these problems.

Mr. TAYLOR. I would like to make a suggestion here that Don Wharton just whispered in my ear and I think is very good. The lifetime of this Commission is not over yet. The power to issue subpenas is still with it. We're in the process of putting together a final report here. I think we can lay out areas of information that we have either sought or believed at this point should be sought, people that we feel this Commission should talk to and if it requires a subpena to get them up here, then that's what would happen.

I believe we can lay out a program for interrogation and investigation at this point. My political inclination is more or less with Senator Abourezk. I think we ought to be getting the new politicians up here, the ones that are going to be shaping these policies for the next 4 years along with the underling civil servants that are the ones that really have to answer these questions.

So I guess what I'm suggesting is that we put together a package for you that you can consider.

Commissioner DEER. I would be very much in favor of this and I would like to see this.

Congressman MEEDS. Mr. Chairman, let's go back to the recommendations on page 52. In the middle of the page, it says:

> Congress should amend the Indian preference legislation to extend Indian preference to all Federal agencies which so recently have assumed the role of administering programs and services for the benefit of Indians.

What is the rationale behind that recommendation?

Mr. STEVENS. I wanted to say one thing and that is that I'm not too sure a new law is required but it is what was recommended. The reason I say that is because in the 1934 hearing, that specific area was addressed by one of the Congressmen or Senators who said:

> If you put those particular words in there, you have to remember that there is just the Bureau of Indian Affairs. Or are you going to refer to all the rest of the agencies?

The answer was yes.

It was the same way in the budget sections where they were considering the budget process.

Congressman MEEDS. What I'm asking is this: Are you suggesting that this Commission recommend legislation which will carry that recommendation into effect? If so, why are you recommending that?

Mr. STEVENS. I think I would emphasize that recommendation particularly on reservations because I believe Civil Service does not and has not ever taken into account some of the very special qualifications needed to work with tribal people.

Many times, tribal people are excluded from BIA positions in which they are much more qualified than non-Indians but the Bureau follows the Civil Service criteria.

Congressman MEEDS. But your recommendation is not limited to what you are now explaining. You're saying all Federal agencies which are administering programs and services for the benefit of Indians should be subject to Indian preference. That includes Justice, Commerce, HUD, and agencies on down the line. I think you identified some 87 Federal agencies that are administering programs that in some way, at least presumptively, benefit Indians.

Now, are you suggesting that an Indian preference akin to the Indian preference which applies to BIA and at least through court interpretation, IHS and others be applied to all of those agencies?

Mr. STEVENS. Yes, sir.

Congressman MEEDS. Now, what's the rationale for it?

Mr. STEVENS. It's for some of the same reasons. I think there are a couple of things. One of them is that employment in the Federal service is a substantial contribution to economic development. Another thing, is it's control of real estate. In other words, it's a matter of controlling our own turf. Indian preference in itself, it's not a——

Chairman ABOUREZK. Would you yield?

Congressman MEEDS. Yes.

Chairman ABOUREZK. We're not clear as to whether you mean like in HEW, the Indian desk, or you know, in HUD, the Indian desk or the entire department. What are you talking about?

Mr. STEVENS. We're talking about the Indian departments, the ones that deal specifically with Indian reservations.

Chairman ABOUREZK. If I might go just one step further. Is there somewhere in here where you were recommending, for example, the Indian desk in Commerce, in HUD and all those people put into the BIA or should they remain separate?

Mr. STEVENS. I think that should be a part of the development of the text. It's a part of the discussions leading to a possibility of a separate agency. Chuck Peone and Ray Goetting—were trying to figure out what a separate agency for Indian affairs meant and they discovered about 20 different variations.

Now, one variation is to combine Indian Health Service, BIA, parts of Interior, parts of Justice, possibly an Indian trust council and so on into an Indian agency that would specifically handle primarily threshold trust activities and services extended by BIA and Indian Health Service. That would be one part.

The other parts of the Federal agencies might operate separately or they could be a part of the Indian agency. I personally think that EDA ought to be in the Bureau. Although I shudder to think how they would handle it.

Congressman MEEDS. Don't you think that recommendation then ought to be amended to show that preference should be extended within those agencies to those positions which deal specifically with the Indian programs, rather than to all positions in all agencies?

I read the recommendation as affecting all positions in all agencies. That is what brought my question to the floor and the chairman's question obviously limited that. With that limitation, I clearly don't have the kind of problem I had with it before.

Mr. PEONE. 7b of 638 uses the same approach in contracting and I believe in contracting, we get more involved with the issue of Indian preference and services and benefits for Indians. There are several other programs besides BIA and Indian Health that deal with Indian affairs and that impact on Indian reservations.

Under 7b, we have a section that deals with contracting, subcontracting grants from all agencies that have Federal domestic assistance——

Congressman MEEDS. I don't have any problem with that. Indeed, I think probably it's preferable, but I don't think the entire agency should be encumbered by an Indian preference. So I would ask, Mr. Chairman, that it be made abundantly clear that it's only with regard to those positions which are dealing primarily with Indian positions, problems, contracts or whatever.

Chairman ABOUREZK. I would agree with that. John?

Commissioner BORBRIDGE. I would like to comment with respect to that statement, I'm sure, that we all pretty well accept the following: As we seek to implement this motion in the manner advanced by Congressman Meeds, it would be very clear, in recognition of earlier statements made by Mr. Stevens, that we would insure, to the extent possible, that Federal agencies would not be seeking ways to circumvent this by farming out some of the responsibilities to Federal subagencies that are not ostensibly in the Indian business.

And further, there are quantities of money which are evidently not being funneled through specifically identified Indian desks or like agencies. Having had some experience with the bureaucracy, I suggest that it would behoove us to be aware of this so that our intent is fulfilled rather than circumvented. I know this is going to be a lengthy process.

Mr. STEVENS. There is something in 7b I think the subcommittees themselves ought to deal with whenever they get a chance. We were thinking about forwarding the results and asking the subcommittees to act. Senator Abourezk sent a letter to all the agencies reminding them that 7b of the act applied to all agencies. In reply, in very nice pleasant language, they told us to stick it in our ear. Now they are removing projects from the area of contracting where it calls for preference and substantial Indian subcontractors.

They're putting criteria and requests for proposals. The RFP's of a Defense Department nature. By that, I'm talking about the nature of how the request for proposal is laid out. It requires that you have a large company in which you have the personnel necessary on a permanent basis and so on and so forth; that coupled with the fact that these agencies have also begun to say that if an Indian company or organization is not located on a reservation or if they are an urban outfit, they don't receive preference. So the agencies are successfully able to ace out even Indian contractors in Rapid City. Rapid City is substantially part of the Rosebud-Pine Ridge situation and yet an Indian person could be living on the reservation but if his company is located in Rapid City, the agencies take the position he's an urban Indian. So Indian contractors can't build houses, they can't do architectural plans and so on. The Federal departments are retrenching and using other devices to circumvent this new law.

Commissioner BRUCE. Mr. Chairman, I'd like to go back to some personal experiences that I had with the then CIO and now here's another event to try to get the agencies to cooperate more where Indian programs are involved. I attended three meetings, I don't know whether anyone is here who was at those meetings but nothing came out of it, nothing. Not only that but there wasn't a single Indian outside of myself attending any of those meetings at all and I had no voice in it. I was just invited to come along.

If any of us—and I have worked to get at least in the Indian desk, I know that most Indian desks are—they have a nice desk and a chair, if they're lucky and they don't do anything—they just sit there. It took us, I don't know, 15 years to get an Indian over in the Agriculture Department sitting at that desk without a chair, you know, and we're just beginning to move.

So I would say that this recommendation here is a start. That if we can urge them to put in people who are Indian, use the preference thing in agencies, then that's a start. I hate to limit it there. I would like to have it go through the whole agency but if we can start there, then we've made some progress.

Just like I think the administration and the White House can indicate its preference for Indians or at least let us know that they like us a little. Unless they put an Indian in that White House and I don't care what he does but just let him sit in there, that we know he's there, we're pointing at that sort of thing.

That's a start and I think any administration, I wouldn't be surprised if this new administration will do just that. But I go along with this idea of having it applied to agencies where we do have Indian programs.

Chairman ABOUREZK. OK. Ernie, I think what I'm going to have to do—let me try to do some scheduling of the subjects. We're now getting a tendency to breakdown and bog down somewhat on some issues and I don't want to demean the importance of all of these issues but how many days of meetings do we have left scheduled for this week—Monday and Tuesday?

Mr. STEVENS. Monday

Chairman ABOUREZK. Only Monday?

Mr. STEVENS. Yes, sir. I would like to say that we probably can handle the remaining subjects on Monday. I don't see why not. Or else, at the next session, we could cover the remaining parts. I have a memo which I'll have Ernie distribute.

If we cover through chapter 7 or even up through chapters 8, 9, and 10, it's going to be all we can do to prepare a text for you by the next Commission meeting and so——

Chairman ABOUREZK. But I mean we're going to run into time difficulties, aren't we?

Mr. STEVENS. Well, at the next meeting we can finish our agenda. In one particular area, I think it's in chapter 8, I made a recommendation.

You see what we've basically been able to do is assemble all the task force opinions and put them in context, evaluate them and so on. There are great big gaping holes in our sections on economic development and natural resources.

Chairman ABOUREZK. In the task force material and in every other kind of material, and what I asked for in that particular instance is to put that off until the next meeting because it's a tragedy; that particular subject may be one of the most important ones.

All right, now what is the chapter 15 in general? What do you intend to cover in that?

Mr. ALEXANDER. There are three parts to that chapter. The first part is something we discussed very briefly yesterday which is the general lack of knowledge about Indian affairs, Indian legal status by the U.S. population and particularly among those people who work in Indian affairs at the State and Federal level.

There are some general education-type recommendations. The second part of it comes from the Commission's organic legislation which requires a consideration of alternative elective bodies and that's a very short section.

The third part of it deals with task force 9 in toto which is a revision and consolidation of 25 U.S.C. and essentially what we recommend there is that because it's such a complex area, that the report be submitted in toto to the appropriate committees with a recommendation for continuing work on the subject based on the work done by task force 9.

Chairman ABOUREZK. All right. If we're only going to meet tomorrow. What about extending the meetings this week 1 more day? Will we be able to do that? Do you have enough material for us to do that?

Mr. STEVENS. Sure.

Chairman ABOUREZK. How does the Commission feel about meeting again Tuesday?

Commissioner BRUCE. I'm all for it.

Chairman ABOUREZK. Does anybody object to it?

Commissioner DIAL. I could have met Tuesday if I had known.

Chairman ABOUREZK. I see. In other words, you're unable to come Tuesday.

Commissioner DIAL. I have a couple of classes Tuesday morning and I made no preparation for anybody to take my place.

Chairman ABOUREZK. We still would very much like to have your presence here.

Commissioner DIAL. I believe we could finish all of this tomorrow if we didn't kill so much time.

Chairman ABOUREZK. We could try, I'm not sure we can't. We don't want to unnecessarily restrict anybody in their debate here or their questioning and so on.

I'll tell you what. We're going to have to finish Federal delivery today come hell or high water and we ought to try to—that leaves Pete's areas tomorrow and if we meet at 10, that would leave less than an hour for each area tomorrow.

I'm not sure. What does the staff think about that?

Mr. ALEXANDER. Mr. Chairman, one of those areas, chapter 9, is quite a large and extensive chapter which deals with health, education, corrections, each one of those subjects probably could take an hour or so. So it is very likely that 1 day would not be sufficient for a full discussion of those eight remaining chapters.

Chairman ABOUREZK. Well. Adolph, what if we took up chapter 12, nonrecognized Indians, first thing tomorrow and if you couldn't make your arrangements for Tuesday, at least you would have one of your major interest areas out of the way?

Commissioner DIAL. Would you also deal with 9?

Chairman ABOUREZK. We could do both of those tomorrow and leave resources till a later hour or a later day.

Commissioner DIAL. I'll try to stay.

Chairman ABOUREZK. I understand. We'll have to—I think in order to get our work done here, we're going to have to set some sort of schedule though because we don't have all the time in the world and we spend an awful lot of time and rightfully so, on the areas that we have covered the last couple of days and today.

All right, let me see if it's all right with the Commission to do this. We'll finish Federal delivery today and we'll try to move through this as quickly as possible. If the staff could be responsive to the questions of the Commission, if the Commission would be cooperative in asking only necessary questions on all of the subjects, I think we can go very rapidly there.

Tomorrow morning, the first subject will be nonrecognized Indians. The second subject will be social services. Will you change the schedule to read that?

Mr. STEVENS. Yes, sir.

Chairman ABOUREZK. Then we'll go right back on schedule again and try to finish the rest of those off. If we haven't finished them, let's meet again Tuesday and until we finish all of these areas.

Congressman MEEDS. Mr. Chairman, I'm delighted to see a member of the other body adopting the rules of the House which means that all things need be pertinent and relevant to the discussion before us and that all responses must also be pertinent and relevant to the questions.

Chairman ABOUREZK. I'll accept that criticism.

Congressman MEEDS. No, it's a commendation.

Mr. STEVENS. Mr. Chairman, could I move to page 15 of chapter 7?

Chairman ABOUREZK. Ernie, before you do that, we have one other matter—procedural matter to take up. There was a suggestion yesterday that we extend the time for the filing of the report and I think we had better deal with that today. I also want to notify the Commission that I have extremely essential business that I have to conduct in my own office tomorrow and I'm only going to be here part of the day.

I don't like to do that but I've been out of the country for two weeks. I have not yet had a chance to go and take care of my business there, so Vice-Chairman Meeds will conduct the hearing of the meetings tomorrow and that's why I think we probably should get this other matter out of the way today about extending the life of the report itself.

We have to talk about this markup schedule right now, so let's try to do that.

Ernie, in this memo you are recommending that we do not have the December 17 meeting, is that right?

Mr. STEVENS. Yes, sir.

Chairman ABOUREZK. That instead we have it in early January, the 6th and 7th?

Mr. STEVENS. Or the 13th or 14th.

Congressman MEEDS. Is that premised on an extension?

Mr. STEVENS. No, sir.

Congressman MEEDS. If there is not an extension, would you still recommend that?

Mr. STEVENS. Yes, sir.

Congressman MEEDS. How could we possibly finish that?

Mr. STEVENS. We'll just have to have another meeting in January and another one in February.

Congressman MEEDS. Refresh my recollection now. The date that this report is to be filed is when?

Mr. STEVENS. February 18.

Congressman MEEDS. And that's mandated by law?

Mr. STEVENS. Yes, sir.

Congressman MEEDS. February 18th?

Mr. STEVENS. Yes, sir.

Congressman MEEDS. And the suggestion of not having a meeting in December is based on the fact that some members can't attend?

Mr. STEVENS. No, sir. It's based on the fact that we are required to supply you the materials 2 weeks in advance of the meeting and by the time we finish this meeting, we'll be about 5 or 6 working days away from that date and we have to supply you with a first draft of the written report, the conclusions and recommendations. We physically could not do that.

Chairman ABOUREZK. All right. In order to extend the time for filing the report, it needs a legislative amendment to the original act, right?

Mr. STEVENS. I'm not sure but I think you probably would have to amend the legislation.

Chairman ABOUREZK. Well, if we don't file it on time without an amendment, it means all 11 Commission members will get busted for violation of the law so may I recommend to the Commission, that we follow this new schedule that you set. If we set the meeting for January 6 and 7, that will give you enough time to get the draft in, right?

Mr. STEVENS. Yes.

Chairman ABOUREZK. And that we, at that point, talk about whether we have to extend the time for filing of the report. We can't do anything about it now till the legislative session starts anyhow because we're going to have to submit an amendment.

Adolph?

Commission DIAL. Yes. I was going to say that when we extended this the last time, you recall Kirke Kickingbird said that we could extend 1 month without any legislation.

Chairman ABOUREZK. We did that.

Commissioner DIAL. Right, we did that and if he's correct, we would have to have legislation.

Chairman ABOUREZK. Yes, I think it's the key to the filing of the task force report. What is it, 60 days from the last filing of those, or 30 days?

Mr. STEVENS. Six months.

Chairman ABOUREZK. All right, so we're right on the dates. We have to file February 18 unless it's changed legislatively but we're still in the time frame if we set those meetings in January. Then we have to set additional meetings in January or early February in order to get the final draft approved, right?

Mr. STEVENS. Yes, sir.

Commissioner BRUCE. Ernie, is that on Friday and Saturday, the 6th and 7th?

Mr. STEVENS. No one has suggested that we do 6, 7, 13th, or 14th and those are Thursday and Friday. It could be on Friday and Saturday, whatever you want to do.

Chairman ABOUREZK. Well, Sid Yates wants those dates, doesn't he, and we would like to have Sid come.

Mr. STEVENS. Yes, sir.

Commissioner BRUCE. Is that the 13th and 14th?

Chairman ABOUREZK. No, 6th and 7th.

Commissioner WHITECROW. The 6th and 7th, is that dispensing with our meeting date we have scheduled for the 17th and 18th of December?

Commissioner DIAL. 6 and 7 is not Saturday; 9 and 10 is Friday and Saturday.

Chairman ABOUREZK. Does anybody have a calendar?

Commissioner DIAL. Yes, I just looked at one before I came up here. Your Fridays and Saturdays are 3d and 4th, 9th, 10th, 16th, 17th and 30th and 31st. Of course, I'll come any time. If you want another 6th and 7th, I'll be here.

Chairman ABOUREZK. Let me restate it. We will not have a December meeting. We will have our meeting on January 6th and 7th to approve the first draft of your report. At that time, we will set another date for approval of the final draft.

Commissioner DIAL. Set it when?

Chairman ABOUREZK. We'll set it on January 6th and 7th.

Mr. STEVENS. Mr. Chairman, why don't you just say at that time, we'll set the next meeting.

Chairman ABOUREZK. That's right, that's what I said.

Mr. STEVENS. No, you said the final approval. See, we could finally approve that the second week in February or something, but between the 7th of January and February 18th, we could have another meeting if necessary.

Chairman ABOUREZK. All right, that's fine. Is that agreeable with everybody? Does anybody have any problems?

Commissioner DIAL. We're meeting the 6th and 7th, right?

Chairman ABOUREZK. 6th and 7th.

Commissioner WHITECROW. The thing that I'm concerned about here is whether or not we are going to have enough time that if it is necessary to request an extension of time before submission of our final report, will we still have that final report completed by the 18th of February so that we would have time to get that report out to Indian country so that they could review it? Will that give us time to do this?

Mr. STEVENS. We can complete the report by February 18th. I'm trying to keep these two things separate.

Chairman ABOUREZK. Ernie, that's another question. I'm glad Jake brought it up. If we approve the first draft on January 6th and 7th, that's the time the report should be mailed out to Indian country. I mean, it's not going to do us much good to mail a final report out because it's finally approved and to get the feedback from Indian country so we can make corrections in the final draft according to the——

Mr. STEVENS. Let me say this about that.

Chairman ABOUREZK. All right.

Mr. STEVENS. I have a problem. We're in trouble with some of our own people. By own people, I mean task force members as well as some of the tribes in that we haven't distributed task force reports. Just the idea of taking a first draft and completing it will be one thing. Distributing it will be another.

There isn't any way possible that we could distribute a first draft for February 1st. It's physically impossible.

Chairman ABOUREZK. All right, then we're going to have to get an extension of filing of the report. There seems to be no choice.

Congressman MEEDS. Well, Mr. Chairman, that of course is premised on the fact that we would distribute the report or the draft or whatever prior to accepting it. Now, I don't know that I'm opposed to that but if we do get it, I think it ought to be a first draft rather than a final report because it's meaningless to distribute the final report and ask for comments on it. That's an exercise in ——

Chairman ABOUREZK. We've already agreed on that.

Congressman MEEDS. Secondly, I think we, as Commissioners, ought to ask some very serious questions about whether it ought to be distributed. Again, I say I don't have any great preference on this but we have set up this Commission in such a way that five elevenths of the Commissioners are Indians. In addition, I think about 90 percent of all the personnel on the task forces were Indians.

Also the task forces have conducted hearings in Indian country and the Indian people were heard from to a much more considerable degree than anybody ever thought they would be. I want to go on record as indicating that I think we've already had a great deal of Indian input and if we are going to tie ourselves in some way to making changes which are suggested from the circulation, I at least want to be on record as saying I'm going to be a little chary about that. I think we've done a pretty good job of getting Indian input already.

So I just want to notify the members of my personal feeling on that.

Chairman ABOUREZK. I would like to speak to that just briefly. I think it's essential for the credibility of the report with the Indian community that the draft be distributed to the Indians to ask for their comments on it. Then we can take our action after that whether or not we know ahead of time we aren't necessarily going to agree with everything the Indian community says. We might, but it's hardly likely that there will be 100 percent agreement.

But I think people have to be given a chance to speak on it and I would support distributing the first draft of the report.

Mr. STEVENS. Mr. Chairman, I'm sorry, excuse me.

Mr. BORBRIDGE. In line with our new guidelines, very briefly, I absolutely concur. I think the Commission has come very far in gaining added credibility and support. I think that the distribution of the draft report would really nail that down and I think it would also be of considerable assistance to us when we start to consider recommendations.

Mr. WHITECROW. I agree.

Mr. DIAL. Mr. Chairman, I fall somewhere in between Congressman Meeds and Senator Abourezk. I believe it's fine to distribute the report in the Indian world and let them see what you have. Get the comments so far.

But you have to keep in mind that this study is finished and it was made by task force members and only minor recommendations can come in. You cannot come in with I shall not vote for any major recommendation from any place if they are major and they differ from the task force reports.

Otherwise, we've spent 1 year here for nothing. That's why I say I come in between the two of you there. If we're going to open up a can of worms of hot debates in arguments and a whole lot of other things that might come up, then it would have been better to—that we should go on as we are.

Let's face it, such organizations as the national Congress, they know what we're doing. They're keeping up with us. They've seen the report, they've read the reports and I want to make it clear that I am not supporting any major changes.

You have to keep in mind, too, the task force reports stand and of course, what goes to Congress is something else. But I would hope that recommendations from Congress—I mean to the Congress are going to be based largely on the work of the people who did the task force reports.

Otherwise, we are spinning our wheels and playing the game of first graders and I don't intend to play that game.

Mr. WHITECROW. Mr. Chairman, I would like to speak to this issue also. I think it's absolutely essential that the Indian world out there have an opportunity to view the entire draft of the reports. Certainly, our task forces have done their job and the credibility of those task forces is recognized.

We also must realize that the Indian world must have an opportunity, if we have credibility as a Commission, to speak to those recommendations that we are going to be making. At least the Indian world will have an opportunity to see what the issues are and then they will be looking at us as Commissioners to determine how we vote on those major issues and then they would be able to see how the Commission worked and how it functioned in its final preparation.

I believe we will have support from the Indian world in this and perhaps finally, once and for all, unifying the Indian——

Mr. DEER. Mr. Chairman, I think this would be in line with the policy of consulting with the Indian people and also, often in the past major policies and programs have come down as a surprise to the Indian people and I think this would be in line with setting a whole new tone, a whole new relationship with the Indian people of this country, by sharing the report before the final draft is concluded.

Mr. BRUCE. Mr. Chairman, I just want to point out here and I agree that the report should be sent out even though from the urban standpoint, the urban centers, I was quite annoyed at the fact that we sent out a lot of questionnaires and got a minimum of response.

We sent out questionnaires to urban centers and got a minimum of response. Now they want a big meeting and I want them to know I'm in a position to make some recommendations on this now but I didn't get help from the urban center people.

But I want that report to go out and let me tell you another thing. Who is going to help us with Congress and so forth but our own people and we want that help and they need to know what's involved here. So we can't go out and say we need your help to do thus and so.

Mr. MEEDS. Mr. Chairman, during the course of the hearings and studies by some of the task forces, I had a lot of correspondence from people other than the Indians who felt that they did not have an adequate opportunity to present views at hearings.

Now, whether that's true or not, I'm not sure. But in any event, I think that the proposed draft, if it is to be mailed and sent and distributed, ought to be sent to people who might disagree with it, rather than just to Indian country.

Chairman ABOUREZK. You mean like some of the rightwing groups, anti——

Mr. MEEDS. I don't prefer to describe them as rightwing groups but as people who felt that they didn't have an adequate opportunity to be represented in the actual field hearings. I think that we should also get comments from them.

Chairman ABOUREZK. We've got a group of neo-Ku Klux Klansmen out in South Dakota I would like to send the report to.

Mr. STEVENS. Mr. Chairman, the Indian people want to be able to read and review and comment on the task force reports and they have not been published yet.

Chairman ABOUREZK. Well, through no fault of the Commission.

Mr. STEVENS. Yes, but if we are able to publish those task force reports and distribute them, we could get comments back which would help us in the deliberations.

Chairman ABOUREZK. Well, Ernie, there are a couple of physical restrictions to that. First of all, those are voluminous, the task force reports. The final report will not be that voluminous. It will be easier to distribute and will be in fact a final statement and it might be far preferable just to mail a draft of the final report out for comment because it's not the task force reports themselves.

There will be the recommendation to Congress, it will be the final report that will be the recommendation to Congress. What do you think? It will be easier to do.

Mr. DIAL. Mr. Chairman, Mr. Stevens, I have a question. Ernie, did you get very much cooperation when you asked for the various reports from organizations and tribes and so forth to become part of the study?

Mr. STEVENS. Yes, as a matter of fact, up until now, the Indian people and tribes haven't been very responsive. We only have a few reports but they have far exceeded anybody's expectations. In support of Commissioner Bruce's statement, over a year ago, we requested all tribes, all organizations, all urban organizations by personal letter from the Senator and me, to submit reports to us. I would like to have hearings for those tribes that did submit reports; tribes like the Crows and Northwest Affiliated and other such. They put together very substantial reports. If there were a hearing, I think these tribes ought to be heard on the basis of the reports they submitted.

Mr. DIAL. To the Chairman and to Ernie, how do you expect to make available the comments that come in after you mail the final—well, not the final report but after you mail the drafts to the Indian world? Some way you need to make this available to all the task force members, Ernie, each one and the specialists who took part in the study. Because this is very necessary so they will know what comments are coming in on their particular topic.

Chairman ABOUREZK. Well, I don't know, Adolph, whether that is entirely feasible to call back in the task force group.

Mr. DIAL. I didn't say call them back in. I said to mail to all the task force members a copy of any comment that relates to a particular task force because if we, as a Commission, pass something to become law, I mean which may become law when it goes to Congress, then I feel that the task force members need to know this, you know, and say, well, you know, I've never heard this before and we say, well, if this came out as a result of the draft that went out, you see, they need to be acquainted with this at all times as a matter of respect.

Chairman ABOUREZK. That doesn't bother me at all. Just mail it to them.

Mr. DIAL. Yes; but I want to make it clear that I want to make a motion to this effect that we do this.

Mr. MEEDS. Mr. Chairman, could I try to put in some kind of framework—a method which I think we ought to follow. I'm not cast in cement on it but I think first of all, we ought to mail to all interested parties, both Indian and non-Indian, a proposed first draft. I think we ought to set a time during which the people who receive it, and anybody else, can consider it and make written comments to the Commission, not to the task forces.

Obviously, the task forces' work is done with the submission of their task force reports. The Commission, with its staff as presently constituted or others that they might wish to bring in, must discuss and make a disposition of the comments which are received. Some of them, we may want to accept and to put in a final draft, others we may wish to reject.

However, we should take up the suggestions at least in a general framework. We don't necessarily have to consider every single one. But we should group them into categories so that all comments are handled, and I think we should specify in the final report how we've handled or disposed of those comments so they are meaningful and so that people will know their comments have been considered in our final report.

Perhaps we could have a special section on disposition of comments received set forth in the final report. We then issue our final report which will be primarily the task force reports, what we've adopted from the task force reports, the comments of the public generally, the disposition of those comments, and the final distilled product.

Mr. ABOUREZK. Will you put that in the form of a motion—that what I've just said——

Mr. WHITECROW. Mr. Chairman, whatever he just said, I will second.

Mr. ABOUREZK. All right. A motion has been made and seconded.

Mr. MEEDS. Mr. Chairman, I move that the following procedure be generally followed subject to changes for the convenience of members and subject to dates and time frames established in later meetings. I move that on a certain date, we will have prepared and accepted by the Commission, a draft of a final report.

It must be clearly understood that this is not the final report, but only a suggested final report. This draft should be circulated to the Indian and non-Indian groups who, as we can best ascertain, are interested in studying the report and making comments.

A time frame should be established during which those comments can be made in writing. At the end of that time frame, after preparation and categorization of these comments by staff, the Commission should meet and consider the comments and suggestions that have been made from interested parties. We can dispose of those in some fashion by vote.

Also, within a certain time frame thereafter, a final approved Commission report will be made which takes into consideration the work of the task forces, the Commission input, all the hearings, the comments on the draft report and disposition of those comments.

Mr. ABOUREZK. Is there a second?

Mr. DIAL. Mr. Chairman, I second the motion and I feel, Ernie, that you need a memo with this motion in order to pass it out to anyone who wants it because that's very good and takes care of anything.

Mr. ABOUREZK. There's a second. All those in favor will say aye.

[Chorus of ayes.]

Mr. ABOUREZK. All those opposed? No? The ayes have it. Let the record show that a quorum being present of seven members all voice voted in the affirmative. No opposing votes.

Mr. BORBRIDGE. Mr. Chairman, a matter of information. Would it be possible to have this sometime before we adjourn? I think it's such an important element in our process and I think it's going to meet with a great deal of support and sympathetic reception.

Mr. ABOUREZK. You mean the memo?

Mr. BORBRIDGE. Yes.

Mr. ABOUREZK. We can have that tomorrow, is that right, Ernie?

Mr. STEVENS. Yes, sir.

Mr. ABOUREZK. And it will be distributed to all Commission members tomorrow? The action that the Commission took today?

Mr. STEVENS. We could also put it in the form of an announcement to the audience. There will be a lot of people here tomorrow, and they'll be interested in it.

Mr. ABOUREZK. OK. Now, let's get on—Jake?

Mr. WHITECROW. Mr. Chairman, I might also suggest with the concurrence of the Commission members, that Ernie, we send out a communication through the news media of this at the very earliest so that people will accept it.

Mr. ABOUREZK. We've adopted the management study and directed the staff to distribute the draft report to the Indian community and non-Indian community.

We only have 45 minutes left so we had better get started.

Mr. STEVENS. Mr. Chairman, I would suggest that we go to page 50, chapter 7. The reason is that it deals with——

Mr. MEEDS. Mr. Chairman, could I just very quickly ask a question before we get off Indian preference? I don't recall all that I read about it in the management study but apparently there was some apprehension among those members of the task force or the special management study about the whole question of Indian preference.

Could you kind of enlighten us about what that apprehension was and how that will fit into the recommendations which are made here?

Mr. STEVENS. Yes, sir. I would like to have Ray Goetting and Chuck Peone talk to that except to say that there was a lot of discussion among the participants and one of the things we all agreed on was that it was administered rather badly.

Chuck, do you want to talk about what the problems were?

Mr. PEONE. The leader of that particular study group was from Labor Relations, a Labor Relations' point of view felt that basically Indian preference in the Bureau was very poorly administered, misunderstood and felt that by taking Indian preference and modifying it somewhat, he felt that we could do that under the present system.

We felt that there was no appeal process in the Civil Service Commission for Indians other than the regular EEO complaint process and he didn't feel as a member of the task force that he had enough time to study the background of Indian affairs such as he utilized the *Mancari* decision basically and went along with the idea that Indian preference could be administered by a separate Indian career service but felt that he did not have enough time nor enough background to promote that effort.

However, he did say that the administration of Indian preference should be strengthened in the report.

Mr. MEEDS. Are any of the recommendations which you have made inconsistent with the findings and recommendations of the management study?

Mr. GOETTING. I might comment on that, Congressman. In the management study that we did in the Phoenix area, we had a former Civil Service Commission employee with us. The classification of positions is very difficult and it's extremely divided among the areas of qualification so that an Indian, when being considered, is actually disturbed about being the lowest minimally qualified, there are three levels of qualification being applied.

They recommended that they use only one. That there be either qualifications or he would either be qualified or unqualified and that the standards are not being written to be applied specifically to it. So that when they do receive an application, a number of Indians won't apply because they are considered, they were only going to be considered, minimally qualified and therefore would be rejected.

It's a very difficult demoralizing process and that's stated on page 35 of this report. That paragraph at the bottom of the page describes that and I might give you an example.

Assuming a college graduate requirement is needed, in the position. That may be minimally qualified and then they let people apply for it but then 5 years' experience, 10 years' experience makes minimum qualifications highly qualified a differential and then they have the opportunity to select the individual they want basically on the three levels of qualifications.

This actually disturbs the entire operation. If they are going to require 10 years' experience, they ought to state it as the minimum qualification and then if the Indian has the 10 years' experience, he is equal and on that basis then, he would be eligible for employment.

So that while they do this, circularization of all the rules, then fringe benefits and that sort of thing, need to be corrected. One other element actually exists in order to get cultural qualifications, understanding, language considerations and the positions, they are forced to reduce the grade levels in many instances in order to get an Indian on the job where an Indian actually is required.

Therefore, the lowering of pay, the lowering of prestige, the lowering of the job has a very detrimental effect on them.

Mr. MEEDS. Well, that is really why I asked the question because through the years, in dealing with this, I've heard a number of criticisms of perhaps, not the law, but of the practice of taking a position, meeting certain requirements of that position, and of advertising for applicants. Then upon not finding any Indians who have applied, who are qualified, the position is downgraded. In some instances, hiring a non-Indian who may have applied and is qualified might make better sense.

I don't think any of us believe, as a general rule, that downgrading a position is the best method for effective administration and maximum benefit to the population served. Assuming that certain qualifications are really required for a job, downgrading those qualifications so that an Indian can fill that position when none has really come up to those standards is not a good way to operate.

I am greatly in favor of the part of the report that says we ought to have an extended effort to qualify Indians and to really understand what qualifications are. I understand, or I believe that there are tests which are given and qualifications which are sometimes required, which are not really as necessary as are some others.

I don't mean to be setting anything in concrete, but I think, as a general principle, this Commission ought to be adopting the concept that rather than downgrading positions to meet people's qualifications, we should be upgrading people's qualifications to meet the requirements of the best service.

Now, is that somewhere stated in this?

Mr. GOETTING. Yes, it is.

Mr. MEEDS. As a policy that we want to achieve?

Mr. PEONE. Yes.

Mr. STEVENS. I would like to say, sir, that no matter what the slant was, everybody agreed that a better system of handling preference is needed. Another example that actually happened recently is the advertisement of a position in the Office of Personnel, that's a very exclusive area and takes special qualifications. So they advertise. They don't get anybody even though they've had qualified applicants apply. So they readvertise just so they can get an Indian person and when that happens, they turn around and blame the Indians because of preference and that's not fair. It's related to what you were saying.

I think the Indian people are willing to concede that they want highly qualified people. A lot of tribal people do not want to be experimented on even by Indians and so we agree with you 100 percent. We would underline that.

Mr. MEEDS. It's the old question of I don't want to be operated on by a brain surgeon. The qualifications are very questionable because the qualification level has been lowered to fit somebody else. I don't think Indian people or the Bureau of Indian Affairs, or any governmental agency policy ought to be doing anything other than qualifying people to meet positions, rather than lowering positions to meet people with qualifications of lower standards.

Mr. DIAL. Mr. Chairman. Chuck, how does Indian preference apply to the nonfederally recognized tribes? Would you comment on that?

Mr. STEVENS. I think Pete Taylor ought to do that.

Mr. DIAL. On Indian preference, Pete. Do Indian people who belong to nonfederally recognized tribes, do they receive any Indian preference over, say a white person or a black person?

Mr. TAYLOR. As the law presently stands, Commissioner Dial, under the 1934 Indian Reorganization Act, an unaffiliated Indian, meaning an Indian who is not a member of a federally recognized tribe, does qualify for Indian preference if he's half-blood Indian.

Now, the question was asked a few minutes ago whether any recommendations in here deviate from that management study or go beyond it. There is a recommendation on page 54 in this chapter that goes to the quarter-blood standard, which is what Ernie mentioned, and Mr. Whitecrow, I believe this is an area that you would be very interested in. It's a subject that we could probably debate forever here today but it's one I think we need to refine our positions on and you Commissioners need to be very aware of what we're doing here.

As it is set out here on page 54, it's taken from the report of Task Force 9 and what we're proposing is—we have two proposals there, alternative proposals, for the Commission to consider and if I may, I'll just read them. I think it would be easier.

Proposal No. 1 would provide that the membership class, the membership in a federally recognized tribe and the descendant class of the IRA—and that is people who were living on a reservation in 1934—should be amended to require a minimum one-quarter degree of Indian blood.

We make no specific recommendations with regard to the unaffiliated one-half blood class. However, we suggest that Congress may wish to consider lowering the minimum blood quantum for unaffiliated and unrecognized Indians to one-quarter degree Indian blood.

So if this recommendation were adopted, it would, No. 1, impose a quarter-blood requirement on people who are members of federally recognized tribes. That requirement is not there now. It would also add to unaffiliated Indians, reduce the blood quantum requirement from one-half to one-quarter.

Of course, there is a second proposal here which springs off the first one. I think I should go on with the second proposal and then allow for debate.

Mr. DIAL. Well, what I'm really saying now, most people in Government are non-Indian; right?

Mr. TAYLOR. Yes.

Mr. DIAL. You don't have enough federally recognized Indians to occupy the positions in Government.

Mr. TAYLOR. Not all of Government but if we're talking about Indian delivery aspects of Government.

Mr. DIAL. All right, suppose you get in some other aspect, why not include nonfederally recognized tribes at least to come ahead of, say, whites and blacks?

Mr. TAYLOR. In programs for Indian delivery services?

Mr. DIAL. No—in anything.

Mr. TAYLOR. Well, because that, Mr. Dial, I would consider to be racial discrimination.

Mr. DIAL. It wouldn't be any more discriminatory than what you already have.

Mr. TAYLOR. That's not correct.

Mr. DIAL. I don't think so.

Mr. TAYLOR. My opinion is premised on a U.S. Supreme Court decision that Charlie Wilkinson mentioned the other day that says that Indian preference—I must admit, that Court was dealing with one aspect of this only, which was membership class—but it said that the preference policies derived out of a political relationship of the United States with Indian tribes and the Indian people. That's a very critical distinction.

Now, if we were to open up all of the Federal Government and say people who are quarterblood Indian, regardless of political affiliation or anything else, have a preference over anyone else for a position, even in positions that are not related to Indian delivery services, all we would have is an invidious discriminatory statute.

Mr. DIAL. Would it be any more discriminatory than, say, veteran preference?

Mr. TAYLOR. Yes.

Mr. DIAL. Why?

Mr. TAYLOR. Because it's based on race.

Mr. STEVENS. Mr. Dial, there are a few things——

Mr. DIAL. I understand this. You don't have to take any more time on it. I only wanted to bring it up for the record. You need not explain it to me, really.

Mr. STEVENS. I think it should be pointed out that the halfblood provision in the Indian preference law has not really been recognized nor has it been utilized. I suspect it has not been used but they are legally qualified to use it.

One of the problems you get into in certain cases is that if there is no tribal roll and/or blood quantum, there isn't any way to identify an Indian and it's hard enough to get the Interior Department to identify a whole tribe of people.

Mr. DIAL. Yes, but they would come under the recognition that you mentioned here somewhere. I was looking at it a minute ago and you have five points of recognition. They could fall under two of those points, you see.

Mr. STEVENS. Yes, sir.

Mr. DIAL. And I don't see why they couldn't receive Indian preference in two of those five points of recognition.

Mr. TAYLOR. As individuals as opposed to their tribes being recognized?

Mr. DIAL. Well, where the tribe is recognized. Let's speak of the Lumbees; I know that Lumbees have been denied Indian preference. OK. The 1956 Act of Congress recognized them as Lumbees but in the last sentence there was a disclaimer.

I see no reason that a Lumbee should be denied Indian preference even if he comes in a second category to the federally recognized tribes. At least he should come ahead of whites and blacks.

Mr. TAYLOR. Within Indian delivery service programs, I agree with you, Commissioner.

Mr. DIAL. Anything.

Mr. TAYLOR. I agree with you and in fact, the District of Columbia Circuit Court agrees with you in the case of *Mayner* v. *Morton*. But it dealt with the eligibility of 22 Lumbees as Indians under the 1934 act.

Mr. DIAL. Let's put this to the test on preference. Since the main thing is the *Morton* decision, OK, that's all.

Mr. ABOUREZK. I just caught part of your conversation about defining an Indian. Is there a place where you absolutely define what an Indian is? It's never been really done on an overall basis in the law. Shouldn't we do that?

Mr. TAYLOR. It's a definite problem. Now, we are proposing it in the context of preference for employment on page 54 here.

Mr. ABOUREZK. What about defining an Indian in this section—a legal definition of an Indian for all purposes, not only for preference.

Mr. TAYLOR. The parts of the report which I am familiar with do not propose a definition of an Indian for purposes of Federal delivery services and I would defer to anyone else that does know.

Mr. Stevens. I would just like to say something about it. One of the things I think has to be continuously considered is the fact that I believe that a tribe should decide.

Chairman Abourezk. That they decide on their own membership is what you're saying.

Mr. Stevens. Yes, sir.

Mr. Abourezk. Which is fine; I don't have any problem with that. What about somebody who's not living on the reservation? What about urban Indians?

Mr. Stevens. It doesn't matter, in most cases. It doesn't matter in the case of members of federally-recognized tribes, for instance. There isn't any member of any federally recognized tribe that can't clearly relate back to either his tribe or the Bureau of Indian Affairs to specifically identify——

Mr. Abourezk. It's an adequate enough definition to say that if he's an enrolled member of a tribe, he's an Indian?

Mr. Stevens. Yes, sir. In the case of non-Federal, let's take Passamoquoddy, for instance, it would have been unjust to say that until they won their recent court decision, that they were not eligible because they were not federally recognized.

Mr. Abourezk. Let's assume that a tribe, if it's not recognized, is a tribe and that a member of that tribe is enrolled and can be defined as an Indian. I wonder if I could hear—I heard Louis Bruce over here. For want of a better word, it was grunty.

I want to know if you will interpret that grunt word.

Mr. Bruce. Well, I grunt because I would like a nickel for everytime I've been hit with, who is an Indian—the definition. I have really given some serious thought to it, and I can't come up with a definition. But, isn't it IRS that has the definition that an Indian is a person who thinks—who say says he's Indian, who is accepted by the community and what else?

Mr. Taylor. Has substantial Indian blood.

Mr. Bruce. And has substantial Indian blood without saying he's fullblood, halfblood, quarterblood quantum. From the standpoint of non-Federal, that might be a good definition and they have used that right along. Dr. Johnson has.

Mr. Meeds. Mr. Chairman, I think that somewhere, as a major recommendation of this report, we have to establish a process by which, No. 1, a tribe is recognized, and No. 3, by which a tribe is given an opportunity and a time frame in which it describes its membership. In that process, I think certain blood quantums should be required. This would be much like the Alaska Native Claims Settlement Act where Natives were identified during a certain time period and everybody knew what the time frame and the requirements were.

After that time has passed, I think that the members of the special class should be limited. That is what we did in the Alaska Native Claims Act. I think it was a process which worked fairly well. John Borbridge can tell you a little bit more about it than I can.

Like some of my Indian friends say, there are too many people with a braid and a bead out there posturing, who because of some distant relationship and the desire to find a place in the sun, have become instant Indians. They often aren't a real credit to Indians at all and are merely taking that posture to gain the ends of their own self-aggrandizement.

I don't think we can come right down to a definition of an Indian, but I do think there has to be a process which will limit that special class of people and I think that's got to be through the tribal system. Again, all of the special rights and benefits which we've been talking about here for 3 days now, don't run to individuals, but to tribes. They run to tribes.

So I think that's a process that has to be utilized. There should be a process set up and some guidelines set up for that.

Mr. ABOUREZK. Let me ask the staff: Should we recommend an enrollment or reenrollment process of tribes to provide them with assistance for that over a 2- or 3-year period? What's your recommendation?

Mr. GOETTING. Mr. Chairman, the Commission actually assigned this problem to task force 3 and we looked into it. One of the problems that some of the tribes have, particularly in Oklahoma and the fractionated area activities, when that land that is inherited by minor blood-quantum individuals, their entitlement to ownership and that sort of thing, and I would not say any particular time—but until that problem is resolved to some degree, it would be difficult for a tribe to include or exclude any liability on its part in regard to an error and on that basis sometimes, we have a problem of actually deciding where to cut off.

We ran into that problem. I just wanted to caution the Commission about establishing too short a period or at least turn this over to the lawyers to solve some of it.

Mr. DIAL. Congressman Meeds, you know, that was a wonderful statement if you had not mentioned blood quantums. I think when you mention blood quantums, that you would find many tribes who have been around for thousands of years but they would have difficulty in establishing blood quantum.

That's the only trouble I have with what you said but that was a grand statement.

Mr. MEEDS. I want to clarify at least what I meant to say with regard to blood quantum. The way we handled this in the Alaska Native Claims Settlement Act, was to establish a blood-quantum process, but then another process by which tribes, in these instances, villages, could recognize other people as members of that group who didn't meet that blood quantum.

That's the kind of situation I think which illustrates an auxiliary process where blood quantum is not the issue.

Mr. DIAL. I see.

Mr. BRUCE. I want to make it clear that I'm not against the system. I'm enrolled in two different tribes and I believe in the blood-quantum thing. I just say that when we're dealing with services, which is another thing, that we're going to have to face this issue of who gets services out there. And when we think in terms of how the urban communities accept Indians, that's another thing.

Some will say, well, he's not Indian, he's not enrolled or whatever. Well, that isn't quite true but I'm not talking against the fact that we accept blood quantum as we have it now. I'm not sure that I think we said fullblood at three-quarters or one-half that is right. I think it ought to be less. I go along with the one-quarter. So, we've got to face that and I guess that's coming up tomorrow whatever.

Mr. DIAL. I would just like to say that it appears that every department in government has their own definition of an Indian.

Mr. ABOUREZK. That's why I brought up the question of should there be one standard definition and try to avoid this great big mixture.

Mr. DIAL. Yes; well, the only thing that's wrong with one standard definition, I could use the Lumbees as an example now, who receive perhaps something like $700,000 in IEA funds, at least I believe that was the approximate amount this year, yet the BIA has a different look at the Lumbees and those funds have been mighty useful.

We've had Indians for many, many years, longer than most tribes in the country. Segregated Indian schools longer than most tribes in the country. Well, wouldn't it be terrible to have some kind of definition that would cut off IEA funds from the Lumbees?

Mr. WHITECROW. Thank you. I've been wanting to get at this for a long time and I wanted to get my foot in the door here. Of course, I keep saying this. It's a primary area of importance but I think, Pete, with this particular recommendation that you have here, on establishing a blood quantum for Indian preference, I have some reservations here about the fact that if we should recommend to the Congress the establishment of some blood quantum as being eligible for even employment or for services, either/or, I believe in my opinion, I think we are really infringing upon the sovereign issue of a tribe.

If we start talking about establishing blood quantums, we are in effect limiting the sovereignty of a tribe. A tribe should have that sovereign right to determine its own members and then the Federal Government should live up to its obligations all the way through regardless.

If a tribe says they want to recognize open-ended descendancy, then that is that tribe's responsibility and authority to do so. If a tribe says they're only going to have full bloods, that's that tribe's prerogative. They are limiting themselves when they set a blood quantum on their membership; they are, in effect, practicing genocide on their tribe because we all know, in reality, we have a tremendous amount of intermarriage all over the Nation.

When a tribe establishes its blood quantum, they are in effect, practicing the assimilation policy which, in effect, brings about genocide for the American Indian which, in the long run, will reduce the delivery of services to American Indians.

Will they have perhaps 50 to 100 years in the future policy establishment with this Commission? I think we need to really look at this from a standpoint if we recommend a blood quantum on anything, we are taking away from the sovereignty of a tribe which we are trying to bring back to them.

Mr. ABOUREZK. OK, the next area.

Mr. STEVENS. I suggest we go back to the budget section which contains more general principles. It may help move it along. That's on page 15, chapter 7, and that particular subpart is the Federal budget.

This section of the study is in compliance with the purpose of the act. The Commission staff has been unable to finalize a significant report of the Federal budget thus far primarily because the BIA and other Federal agencies do not report on expenditures on behalf of American Indians in a manner that is conducive to evaluation.

The Federal Government cannot review the effectiveness of Federal expenditures spent on behalf of Indians because nobody knows what the Federal budget is, much less be able to evaluate performance by a program and budget line item.

Consistent with a consensus of findings and recommendations, of task forces as well as from numerous tribal statements and positions on tribal organizations, the staff recommends the adoption of the following general principles for Federal budget delivery.

One. Enact legislation which would apply to all Federal appropriation acts ascribing to tribal governments the same status as States and their political subdivisions for funding purposes to serve as an eligible subdivision for this purpose when allowed direct Federal funding——

Mr. WHITECROW. Excuse me, Ernie, where are you? What page?

Mr. STEVENS. Page 15, chapter 7.

Mr. WHITECROW. OK.

Mr. STEVENS. It's the budget delivery system. Such legislation may have similar language as that suggested by task force 9 as follows:

Indian tribes which have been recognized by either Federal or State governments shall be recognized as independent units of government for purposes of eligibility under Federal domestic assistance programs.

Two: Federal budget requests should be submitted by tribal governments based upon long-range development plans for community needs. These long-range plans should include ongoing processes on a 3-year planning cycle including current year, budget year, and planning year, such plans to be amended and submitted annually and conform to existing or proposed Federal appropriation cycles.

Three: Federal program standards and/or eligibility requirements should recognize the authority of tribal governments to create public agencies or corporations eligible for Federal programs.

I'll give you an example of SBA. SBA doesn't recognize the right of Federal tribes to charter their own organizations—which they can—and as a result, in order to deal with SBA, you have to get a State charter. If you want to use the tribal enterprise, you can't because they are not willing, they don't recognize tribally charted organizations as being eligible for some of their programs.

They require you to get a State corporation charter which is not desirable for a number of reasons. One of them is infringement on tribal sovereignty itself.

Mr. ABOUREZK. OK, Ernie, when you're reading these recommendations, just read the outline portion. If anybody has a question, they'll direct it to you instead of you going clear through the explanation because there's no use. You know, people have this thing in front of them. They can read that and you reading the underlined portions will give them a chance to stop you if they want to question you.

Mr. STEVENS. Federal funding should be provided with strict limitations on Federal civil service employment and other administrative expenditures by Federal agencies through which funds are appropriated.

Five: Tribal program budgets presented for funding under long-range community plans should be presented to Congress for consideration with minimum alteration by administrative levels of the executive department. The tribal budget process which is decided under the law in 25 U.S.C. section 476, should be fully recognized and implemented. That's a part of the IRA.

Mr. Whitecrow. Excuse me, Ernie and Mr. Chairman, you are getting into the band analysis, aren't you, right?

Mr. Stevens. Hopefully not, sir, but we could talk about it. The band is in many ways consistent with this particular statute. The reason for it is, the law—I think it was section 16, wasn't it, Pete?

Mr. Taylor. Yes.

Mr. Stevens. This was section 16 of the Indian Reorganization Act and it stated that the Secretary of Interior had to advise all tribes of the appropriation estimates or Federal projects for their benefit prior to submission to OMB and Congress.

The bank is a method by which they tried to determine priorities. It is not really an equitable method to comply with this law at all. What they used to have in the old days (and sometimes you need to go back to that to get some halfway decent things) is the budget line items.

Mr. Whitecrow. Under long-range community plans, I am reading that tribal program or tribal budgets be prepared at the very lowest level at the agency whereby that superintendent of that agency or that office or whichever it might be, would have to work with the local tribal government to determine those budgetary requirements.

Now, is this what I'm reading here?

Mr. Stevens. Will you repeat that, please?

Mr. Whitecrow. I'm not sure I can.

Mr. Stevens. Just the end of that.

Mr. Whitecrow. Are we in this particular aspect developing the budget for local operations at the very lowest level right there at the tribe, with the tribal government having total input into the development process or budgets?

Mr. Stevens. Yes, sir.

Mr. Whitecrow. Would this be a deviation from the BAND analysis?

Mr. Stevens. A decided deviation.

Mr. Whitecrow. Very good, thank you.

Mr. Stevens. Six: the Congress should enact legislation that requires Federal-Indian domestic assistance programs to be strictly accounted for.

Seven: Federal appropriations to Federal agencies for administration involved in programs affecting Indians shall be separate and apart from tribal government funds.

Eight: All Federal appropriation acts should exempt tribal governments from any requirements which might compromise tribal integrity or Government sovereignty.

Nine: Appropriate congressional and Executive orders should be issued which call for the compliance of Federal agencies, Federal regional councils, and the Bureau of Indian Affairs in the implementation of the Joint Funding Simplification Act for delivery of Federal programs and services to Indian tribes or to tribal governments.

Ten: Special funding for services or programs of the Federal Government for Indians which are not conducted for and by tribal governments should be requested, budgeted for, and appropriated separately.

Eleven: Federal funds should be distributed with some sense of equity with such variables such as planning, capability, population, land base, financial condition being measurable and justified. Minimum threshold financial requirements for small tribes should be satisfied without regard to equity and variables.

Mr. ABOUREZK. Ernie, now the additional recommendations in the following pages deal mostly with the management study, is that correct? The only thing left in this program that does not deal with the management study, is there anything left?

Mr. STEVENS. The independent agency is dealt with here.

Mr. ABOUREZK. Let's bring that up now, leave out the management study since we've already adopted it and everybody is very familiar with it. Let's talk about the independent agency now. What page is that recommendation on?

Mr. STEVENS. Page 70.

Mr. ABOUREZK. What's the recommendation on that? It's 72, I think, starting with No. 3.

Mr. STEVENS. Okay——

Mr. ABOUREZK. I've got to say one thing, Ernie, that part of what you're calling for would be unconstitutional. Where you say there will be proposed enactment of a new prime agency—of the trustee by creating an independent agency removed from the Department of the Interior and independent of the executive branch. Those words right there, independent of the executive branch, would be unconstitutional.

Under the Constitution, the Executive must be in control of any administrative agency or executive agency. It has to be there. Congress can't run it.

Mr. MEEDS. Like the Federal Reserve Board?

Mr. STEVENS. Could you conceive that we could name one agency that doesn't go through the Executive?

Mr. ABOUREZK. You cannot have that controlled by the Congress explicitly or exclusively. You just cannot do that. We just had a Supreme Court case on that—the Federal Elections Commission. There were members of the Federal Elections Commission who were appointed by Congress and the Commission was deemed to undertake some administrative functions. The Court threw that out because it was unconstitutional.

Mr. TAYLOR. In the broad concept that you're talking about, I would defer to what you are saying. It is possible, however, to create agencies that do have some independence from the Executive. As Congressman Meeds mentioned, the Federal Reserve Board.

Mr. ABOUREZK. That's not an executive agency. In other words, it does not administer funds.

Mr. TAYLOR. All right, TVA. One thing, it's possible to create agencies that are not under the same kind of line authority that is generally found in the executive agencies. I know Bill Veeder wrote a paper on TVA at one time, as an example, and Ernie, you gave that to me some time ago. There are agencies that operate in a different fashion from the normal scope of the Cabinet-level departments. Frankly, I haven't explored the legal issues in this thing.

Mr. ABOUREZK. I wonder if it wouldn't be not only constitutionally safer but even more politically feasible and it might even work better if we had an independent agency somewhere under the President.

Mr. STEVENS. That's what we are describing. Yes, sir, we're talking of an agency like OMB and I think we can clarify this.

Mr. ABOUREZK. That's what you need to do. We need to all have an understanding of what you mean and if we understand you don't mean to pull it out and to say it's off by itself without anybody—OK, go ahead.

Well, let me just start this ruling by saying I'm in favor of making it a separate independent agency, Cabinet level preferred. Does anybody here want to speak against that concept?

Mr. WHITECROW. I would like to speak for it, Mr. Chairman.

Mr. ABOUREZK. OK, that's one, two, three, four, without objection——

Mr. TAYLOR. I think a few minor peripheral comments might be in order. I see there's complete unanimity here and I believe most of the testimony of the Indian country also supported this concept but to sort of alleviate fears, I think what Ernie has said about this thing, that the creation of this thing is a process, not an event, is a very important notion.

There are a lot of different programs that are in different agencies. I'll just speak for myself here. I can see the Bureau of Indian Affairs being pulled out of the Department of the Interior. The legal office, the Division of Indian Affairs, pulled out with it and made a part of this new agency.

I think in the process, a portion of the thing being—where as this new agency gains its wings, you look over to the Department of Commerce and the Indian desk there and consideration can be given as to what—or whether this program should be shifted over and it would be an on-going process, not a traumatic event that is imposed all at once.

Mr. ABOUREZK. What about the trust counsel authority? Is that dealt with in this chapter? We may as well talk about that now at the same time. Would you conceive of a trust counsel authority being in the new separate agency or separate from the new agency within it?

Mr. STEVENS. It could be within the same organization and still be separate in a sense. That particular thing can be done in a number of ways.

Mr. ABOUREZK. Which way do you recommend? Well, I think everybody here kind of likes the idea of a trust counsel authority. When you come back with the draft, pick a nice way to do it and we'll talk about that or pick the alternatives and we'll talk about the alternatives.

Mr. STEVENS. I want to ask you something that's related. Is the Commission, or would the Commission be talking about an independent agency such as TVA? The reason I mention TVA is because of its somewhat similar nature—you're talking about people and resources and land. You're talking about something that is controlled by those people. Are we talking about something that's partially or wholly controlled by Indian people? If we are, the trust counsel authority, because of its responsibilities, may have to be appointed wholly or partially by the President.

In that case, it would have to be a different kind of arrangement. It would have to be a two-headed kind of thing, so to speak.

Mr. ABOUREZK. It would seem to me if you had an independent agency, you would have to have—the head of that, of course, would have to be appointed by the President with the assent of the Congress or the Senate. Also, if you can accomplish this thing of having it a cabinet-level agency, Secretary for Indian Affairs, if we can get that done. That's what my preference is. I don't know about the rest of the Commission members.

But there is also another concept that has been explored and I think I first heard of it from Ernie Stevens a few years back, that the way the agency be conducted would be through Indian people elected by the Indian community nationwide.

Say there are what, 12 BIA areas at this point? In other words, divide the country up into areas, have elections conducted periodically and have 12 Indian commissioners who will sit as a sort of board of directors to advise and to pass on Indian policy and they would be responsive to their constituences.

In other words, the policies carried to the President and to the Congress by the Secretary of Indian Affairs would be those recommended by the 12 elected people. That's another concept that ought to be explored. Now, what does the rest of the Commission think about that?

Mr. WHITECROW. Mr. Chairman, I have thought about this particular aspect for many years and have always felt that just because the American Indian is in a separate situation, we should have a separate department of Indian affairs and that we should have it at cabinet level. I feel that that should be our first priority to seek and then if this were not possible, to shoot for the arrangement that you referred to with a Commission on Indian Affairs elected by the Indian people.

I think that would be the most appropriate, it would be acceptable.

Mr. ABOUREZK. Not both.

Mr. WHITECROW. Not both, I don't think both would be workable.

Mr. BORBRIDGE. Mr. Chairman, I would like to concur with these comments. I very much favor that either we get a cabinet level or the next highest level with the fullest maximum participation by the Indian people in the governing of that agency and its affairs.

Mr. BRUCE. Mr. Chairman, I would like to go on record in support of that. I do want to raise a question about the regions—how we are talking about using the same area director regions for elections of this Commission or whatever he's talking about.

Mr. STEVENS. I think the proper way to address this is at the tribal or community level.

I feel that everybody's forgotten that we have a mechanism by which we can deal with the Indian people and it is called tribal government.

Executive department people, everybody, even the Congress, are always saying they don't know what we want but they never ask the tribes what they want specifically. In other words, if somebody wants a vote or somebody wants to know what people think as a tribal unit, why don't they write, or go to the tribe and then vote on the basis of what they say. I think there's really no problem conducting such an election.

When you try to conduct an election from the basis of a national perspective, you get into problems because then we get the national interest groups lobbying to see who gets to handle the action. You shear right past that by dealing directly with the tribes.

Mr. Abourezk. Well, that's not hard and fast.

Mr. Stevens. You can do it by tribe, by area. I don't think it's a real problem.

Mr. Abourezk. One other question I have. I had a concept that I've been toying with for the last couple of years, specifically in the area of Indian housing and after seeing what kind of bureaucratic mess the tribes have to go through to get housing programs approved, I developed a concept that we ought to have a national Indian housing authority, perhaps again, elected in areas or regions whose sole function would be to obtain funds from Congress each year and to allocate those funds to the tribes based on geography, population, relative wealth of the tribes and so forth.

The only other bureaucracy involved with tribal housing would be the local tribal housing authority whose job it would be to establish housing priorities and then make a request to the national authority for funds with standards commensurate to the local area.

For example, we find out with the Pueblo, that HUD required crackerbox housing standards down there when the Pueblo wanted to build them on adobe, which were by far superior to the crackerbox standards of HUD. You could avoid that sort of thing by having minimum safety standards everywhere, but yet esthetic standards and other things applicable in the local community as established by the tribal housing authority.

Now, that's another concept I would like to see you explore in the final draft or in your draft.

Mr. Bruce. Mr. Chairman, when you're talking about pulling all of the housing activities in IHS and BIA into this national housing——

Mr. Abourezk. Yes, pulling it out of all the other agencies.

Mr. Bruce. And then funding it into the national housing authority——

Mr. Abourezk. Yes.

Mr. Bruce. I'm all for it.

Mr. Abourezk. It would really minimize the bureaucracy in that regard.

Mr. Meeds. Mr. Chairman, as an old friend of mine from Texas used to say, we are just talking here, but in conceptualizing some kind of agency, bureau, or Cabinet level position to run a framework of delivery of services to Indian people, we've got to take into consideration that the new President has some ideas about how he wants to reorganize this Government. We ought not to be operating completely separate and apart from that, but we ought to be getting our input on that immediately. I hope that you people will meet as soon as possible with the Carter transition people.

My own ideas are that we ought to have some kind of a delivery service and organization which would be somewhat in the position of the Office of Management and Budget out of the White House.

Indian input, whether it's by vote, tribal selection, or regional selection, should be solicited for the selection of the person who will be directly responsible to the President for the running of that agency. There also must be Indian representation, whether it's an advisory board or whether it's an actual commission which works with the head of that agency to get the diversity of representation which will be needed. I think all of us have dealt with these matters and understand that this diversity is necessary.

Those persons could be chosen by the President from recommendations which are made from the field and that agency could then be organized along the lines of the recommendations of the Management Study Group.

I think it would be a mistake to demand that it be at Cabinet level, that it be thus or so until we get some input from the Carter people on this.

There are a number of people who are not receiving the services to which they would be entitled under the special Federal-Indian relationship, but we're talking in the final analysis about 1 million people. Now, if every million people in America who had some kind of special relationship with the Government were to demand a Cabinet-level bureau or agency or whatever you want to call it, we might be flying exactly in the teeth of what I at least perceive Mr. Carter to be headed toward, which is a kind of consolidation of those agencies, groups, or whatever.

So I just don't think we can make a decision on this at this time. I think we ought to remain flexible on it with the caveat that we recognize that special relationship. We recognize clearly that there's a conflict of interest in the administration and organization of the Department today. We can say that we want to get away from that conflict of interest; that we want to put special emphasis on this problem; that we want to have it in an area and in the hands of people who recognize this special relationship and who are at least presumptively somewhat more responsive to those special problems than other people might be.

That's pretty general.

Chairman ABOUREZK. Can we say for those purposes that the Commission should recommend a separate agency and not state where it ought to be? What do you all think about that? At least, it ought to be separate and apart.

Congressman MEEDS. Separate entity.

Chairman ABOUREZK. Yes; and maybe the level of it ought to be decided in conjunction with President Carter.

Mr. BRUCE. I feel very strongly that here we are, backing away from something that we've wanted and maybe if we shoot high enough and want it on a Cabinet level, that maybe we'll know that we'll probably have to back away from it.

But I still don't think—maybe it's all right, I don't know how the other Commissioners feel about this. I know what Congressman Meeds has said. We're always getting that saying OK, well, maybe we need a department of black affairs and so forth but I think we've got to remember that we were here first and our arrangements were different.

We were under treaty and so forth. We need to fight for that and I'm sure we will as Indian people.

Congressman MEEDS. If I could respond. The trouble with shooting too high and hitting too low is often if you cast yourself in concrete about shooting too high. It becomes another broken promise when you don't achieve that high target. I certainly wouldn't want us in the position of asking for something when we don't know whether it's achievable or not.

I just point out realistically that we may be asking for something we're not going to be getting, I would hate to be in the position of going into that and knowing it's not going to happen.

Mr. DEER. I would like to state that I also support the concept of a separate entity. I think we need more discussion of whether it should be a special cabinet department or if it should be a quasi-independent TVA-type agency but I think we can all recognize that perhaps there needs to be some reorganization and some change from the status quo.

I don't think we should approach this though by what we might get or what we could get. I think we should make our decision and make a strong stand for it. I think those of us who have been aware of Mr. Carter's penchant for reorganization should keep this in mind and we should take this into account, a reorganizing for the best interest of our people.

Also, I think there have been comments from time to time about the international implications here and I think that if we did go ahead and let's say have a separate cabinet-level department, that this would affect native peoples across the world and it would show what the United States is doing to rectify ancient wrongs and that a change is possible.

So I would like to bring that into account. The image that we would project by making such a substantive change.

Chairman ABOUREZK. Let me suggest to the staff that when you bring your draft back, put in the alternatives—cabinet level—and we'll vote them up and down. That's the best way to do that.

All right; what's the next issue?

Mr. STEVENS. Mr. Chairman, I want to ask you a question. I was wondering whether the Commission would entertain now or tomorrow the possibility of taking a Commission action in relation to what may be an action of Congress as early as the 4th or 5th of January related to a separate committee for Indian affairs.

Chairman ABOUREZK. That's a good question. There is a new committee operating in the Senate, a Committee on Committees that wants to reorganize congressional committees. That will be brought up in the Democratic caucus beginning January 4. It's liable to run for 2 or 3 days because there's a leadership fight as well.

I recommended to the committee that there be a separate committee on Indian affairs in the Congress and the response I got from them was that their direction was to close down a lot of committees and not establish a lot of new ones. My arguments about the special treaty relationships, trust relationships, and conflict of interest did not prevail upon the committee that I spoke to.

I think though that we should take a position on it and I think that Ernie's idea is good, that we should take a position today or tomorrow, preferably today, and recommend that a separate committee be established for Indian affairs and that can be transmitted then to the Democratic caucus.

Jake?

Mr. WHITECROW. Mr. Chairman, I've been aware of this particular action for about a month now that the Congress was contemplating on taking this action. I personally feel that we are in danger of losing our Indian Affairs subcommittee in this particular action and I would move that this Commission adopt a policy recommending to the Democratic caucus that a special committee on Indian affairs be adopted in both the House and the Senate.

Chairman ABOUREZK. Is there a second?

Congressman MEEDS. Mr. Chairman, first of all, I would hope we will not be taking any formal vote today other than the ones on which there was absolute consensus. I hate to keep playing a devil's advocate here but the Indian Affairs subcommittee of the full Committee on Interior and Insular Affairs probably handled in the last session one-one hundredths or one-two hundredths of all the legislation that went through the Congress, and probably handled less legislation than certainly any full standing committee of the House.

And again, I think we have to look at the realities of the situation. With the amount of work necessary, if the recommendations of this Commission were to be implemented, and considered in a timely fashion, it would almost take a full committee.

I recognize that, but whether or not we are being realistic by casting ourselves in concrete on this recommendation, I have some question. My personal opinion is it's highly unlikely that the House—and I can only speak for the House—is going to create a special standing committee on Indian affairs. I just don't think that's going to happen.

I think what we ought to be doing again here is laying out some alternatives, and not say that this is what we must have.

Chairman ABOUREZK. Well, I think there's merit to that argument but I think that we sincerely ought to recommend that Indian affairs be taken out of Interior because that's where the great conflict of interest arises.

Congressman MEEDS. I agree.

Chairman ABOUREZK. Interior is generally populated by western Senators and Congressmen, all of whom have interests out there and western Senators and Congressmen are subject to great pressures, political pressures, by the non-Indian community and I don't know where you would put it—that Indian Affairs subcommittee. It might be better in Labor and Education or Government Operations, even.

Mr. Meeds?

Congressman MEEDS. Mr. Chairman, I was a member of the ill-fated Bolling committee in the House where we recommended that Indian affairs be a part of the Government Operations Committee. I don't know that that's the best option, but it's the best we could find at the time recognizing the conflict of interest in Interior.

But I might just take a little issue with the Chairman's statement—or my inference of the Chairman's statement—that it's necessarily wrong for Members from affected States to be on the Indian Affairs Subcommittee.

We are dealing in this country with reality. I have always personally been upset that all the members of the Armed Services Committee, from the House and Senate, come from areas where there's a great impact by the Armed Services and a great many of the members of the Education and Labor Committee are education or labor oriented.

Members from the Agricultural Committee of both House and Senate come from farm States and so on. But they do, in this fashion, represent at least a cutting edge of problems.

I think that we would be shortsighted if we were to demand some kind of situation in which only those who are insulated from the real problems in the field were members of the Appropriate Committee. I recognize that it's also nice to have some insulation, but it's also nice to be a little realistic sometimes.

Chairman ABOUREZK. What is the pleasure of the committee in regard to a separate committee? Does somebody want to make a motion?

Mr. WHITECROW. I have made the motion.

Chairman ABOUREZK. What's the motion?

Mr. WHITECROW. I made the motion that we go on record and establish that the caucus coming up on the fourth day of January consider establishing a separate committee on Indian affairs. The reason that I made that motion—and that would be a separate committee in both the House and Senate—is the fact that if we're going to be shooting for a cabinet level, then I certainly think we need to put the same emphasis in the House and the Senate, thereby giving strong emphasis all the way through in the Federal Government.

Chairman ABOUREZK. Your motion is not necessarily that we put it in the final report but that we make the recommendation as a Commission to the caucus?

Mr. WHITECROW. To the caucus, yes, sir.

Ms. DEER. I second it.

Mr. BRUCE. Question?

Chairman ABOUREZK. Louis?

Mr. BRUCE. Can we ask you who are in the Congress where this committee might end up?

Chairman ABOUREZK. I don't know, I couldn't answer that.

Mr. BRUCE. Any idea?

Chairman ABOUREZK. No.

Mr. BRUCE. OK.

Mr. DEER. Mr. Chairman, I would express a point of view that I have heard from a number of Indian people in regard to this. It's a feeling that by fragmenting Indian affairs into several other committees, the Indians are going to get lost, that there will be a great difficulty in educating numerous people and having gone through a lobbying process myself I know it would be a tremendous job to educate many, many other people in various committees rather than concentrating on major committees.

So I would like to speak in support of the motion.

Chairman ABOUREZK. Any other comments?

Mr. BORBRIDGE. Mr. Chairman, as I understand the motion, what it does is to state that on the upcoming meeting of the Commission, there will be presented to the Commission a recommendation, but I don't quite perceive that it precludes other options as being placed before the committee.

Chairman ABOUREZK. No it doesn't. I think if I clarify it with Jake properly, the motion goes toward—and I think it will go in the form of a letter from the Commission to the Democratic caucus—putting us on record in favor of a separate committee hoping that they'll act that way. Then the staff will come back January 6 and 7 with a number of alternatives that we can vote up or down.

Mr. BORBRIDGE. OK.

Chairman ABOUREZK. Is that the way you intended it, Jake?

Mr. WHITECROW. Just exactly.

Congressman MEEDS. Mr. Chairman, if I might, how would it look if we sent a letter tomorrow or the next day to the Democratic caucus suggesting a full committee and then later came forward with a recommendation that it be, for instance, in the Committee on Government Operations?

So what we are doing here is taking a——

Chairman ABOUREZK. I personally don't see it that way. By the time we're ready to meet again January 6 and 7, we will know what the disposition of the caucus would be and then we can take alternative action at that time if it's needed.

OK. All in favor of the motion will raise their right hand. Five. All those opposed raise their right hand.

The vote is 6 to 1 in favor of the motion. The motion passes.

Congressman MEEDS. Mr. Chairman I want the record to show I voted against it because I think it's unrealistic request.

Chairman ABOUREZK. OK. I'll direct the staff to prepare a letter on behalf of the Commission. Point of clarification, do you want it to go to the House Democratic caucus as well?

Mr. WHITECROW. Yes, sir.

Chairman ABOUREZK. All right. A separate letter to each Democratic caucus in the Senate and the House and the Democrats are organizing both bodies. Well, we'll work on the drafting of it Ernie, if you'll work with me on that.

We can do that, it doesn't have to be done this week necessarily but sometime before January 4.

Congressman MEEDS. Mr. Chairman, I would just like to point out further that there will be no action taken by at least the Democratic caucus in the House on the formation of the House of Representatives itself. At most, this would be a recommendation from the Democratic caucus to the House because what you are requesting is not a matter which has to be dealt with by the Democratic caucus but by the full House of Representatives and the full Senate.

It is an organizational question and would have to be by concurrent resolution and not by an adoption of a resolution in the caucus.

Chairman ABOUREZK. No; but if the Congress adopts it, then the full Senate and full House will adopt it since traditionally what the caucus does by way of organizational matters is carried on to the floor of each body and the Democrats generally totally support those recommendations out of the caucus.

Congressman MEEDS. If the chairman will yield, I'll just remind him of my experiences with the Bolling Committee and with the Obey Commission and others when that hasn't exactly been the case.

Chairman ABOUREZK. Well, you can't win them all. Are there other issues now that need to be brought up in this chapter? We are approaching 35 minutes beyond our deadline.

Mr. STEVENS. On page 72, I think we address the independent part adequately and the budget part and separate career service has already been dealt with.

The next step is to develop a unified program of economic development on Indian reservations for Indian people * * * premised on the development and maintenance of tribal autonomy and sovereignty. Related to autonomy and sovereignty, procedures would be developed to provide Indians with an integral board and policy formulation decisionmaking process. We dealt with that.

Develop an organizational structure, decide to shift authority and responsibility to the local level. We dealt with that.

Implementation plans and structural revisions should be prepared for considerations of the January meeting based on the above guidelines.

Chairman ABOUREZK. Is that it?

Mr. STEVENS. Yes, sir.

Chairman ABOUREZK. OK. We are 30 seconds away from adjournment or recess. This is your last chance.

We are recessed until 10 o'clock tomorrow morning.

[Whereupon, the hearing was recessed at 1:40 p.m. to reconvene at 10 a.m., Monday, November 22, 1976.]

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

Section II—Findings and Recommendations

MONDAY, NOVEMBER 22, 1976

WASHINGTON, D.C.

Present: Senator James Abourezk, Chairman, Congressman Lloyd Meeds, Vice Chairman, Senator Lee Metcalf, Senator Mark Hatfield, Congressman Steiger, Congressman Sidney Yates, Commissioner John Borbridge, Commissioner Louis R. Bruce, Commissioner Jake Whitecrow, Commissioner Ada Deer, Commissioner Adolph Dial.

Commission staff: Ernie Stevens, staff director, Ms. Ernie Ducheneaux, administrative assistant, Paul Alexander, Peter Taylor, Ray Goetting, Donald Wharton, Charles Wilkinson, Dr. Patricia Zell.

Mr. MEEDS. The American Indian Policy Review Commission will be in order for the purpose of the proposed report of the Commission and the clerk will call the roll.

Members present: Commissioner Borbridge, Commissioner Bruce, Commissioner Deer, Commissioner Dial, Congressman Meeds, Commissioner Whitecrow, Congressman Yates.

Mr. MEEDS. Seven members have answered to their names and a quorum is present.

The first order of business today is a discussion and explanation of chapter 12, "Non-Recognized Indians." Paul Alexander is the lead staff person on this.

Paul, could we ask you to give us a general overview of your task force reports and then perhaps we could get to the specific recommendations of the staff.

Mr. ALEXANDER. Much of the materials in this chapter——

Mr. MEEDS. Excuse me, any of the Commission members should feel free to ask and interject questions at any point. Please proceed.

Mr. ALEXANDER. Most of our materials in this chapter come from task force No. 10 which was both nonrecognized and terminated Indians, and because of the legal distinctions between the two groups, we have separated them into two chapters and are only in this chapter dealing with nonrecognized. In addition, several of the other task forces made findings and submissions in this area.

This is an area that the staff does not feel at this point that we have a definitive pattern of recommendations, but a general outline of the direction we would like to follow and then work out some of the details. Generally, historically nonrecognized Indians have been Indian tribes in the United States both in the West, but predominantly on the east coast, who for a variety of reasons, have not been formally subject to the political relationship between the United States and the tribal entity.

The term "nonrecognized" is a term deeply resented. In field hearings it is almost 50 percent of the scope of the testimony, the notion that people's names that go back deep into the history of this country somehow feel that terminology makes them non-Indian.

One of the prime things that comes from all of the field hearings, regardless of the actual political relationship, the level of services, is that there be a recognition that these people are in fact Indians—as a prime moving statement in this subject area. The other point that has to be kept in mind, is that there is significant diversity between the group we have been calling nonrecognized Indians. There is a diversity of history and there is a diversity of current circumstances.

Some of these groups have had treaties with the Colonies and in some cases with the nations that preceded the United States, some have significant land bases with significant population, some have minimal land bases, some have fairly intact governmental units. What we have identified and what the task force has identified is that there has been a significant problem with how the Department of the Interior, the prime agent of the United States, has operated in extending recognition. The notion that people who conceive of themselves as Indian have to petition the Secretary of the Interior and prove their Indianness is something that is extremely offensive to the people in the field, and is spoken of with great frequency.

I will move to our page 12 in the chapter. The staff has come up with a tentative package to try to take into consideration some of the issues in this area. One issue I must mention before we get into it, is that there is a significant feeling in Indian country generally, because the Indian pie, regardless of the fact that nobody can define it with specificity of actual dollars, is small. Many of the tribes currently in the Federal-Indian political relationship, called recognized tribes, have expressed the fear that adding groups, adding tribes to this package will significantly diminish the services that those groups are currently getting. And this is a practical political problem which needs to be faced and we think we have tried to face it to some extent in our pattern of recommendations.

Mr. MEEDS. May I interrupt at that point, Paul, to ask a rather basic question. It seems to me in view of these acts with the recognized tribes, we have premised the obligation, responsibility, and relationship between the Federal Government and tribes on treaties and aboriginal rights. What is the basis for the responsibility of the Federal Government to nonrecognized tribes and specifically to tribes which perhaps, there never were treaties?

Mr. ALEXANDER. The basis essentially comes out of the Kagama Doctrine of 1887. Kagama talks about dependency status and that concept is very important. It is a course of dealings of the United States and its preexisting States and Colonies with the Indian people which have in effect, placed the Indian people in a wardship status, in a status of being dependent upon the United States, of having removed certain land bases, having interacted in a way that has a negative impact on the political, social and economic viability of these groups. Kagama is one of the underlying conceptions in the trust responsibility area. The facts that show a trust responsibility, be they evidenced by treaty or specific Executive order, are generally the same and even in some cases more severe, particularly on the east coast.

I was personally struck sitting in hearings in Boston, Mass., to have a gentleman come up and say I am chairman of the Mohegan Tribe, contrary to the general wisdom, and there are 200 of us living on a land base in Connecticut. We had an agreement with the United States. We lost a great deal during the expansion and the Colonial period. What we are talking about is a course of dealings, mostly on the east coast, and there are differences on the west coast, nonrecognized tribes clearly, between the States and the Colonial Governments and the various Indian tribes which put the people in those situations in a *de facto*, though not necessarily recognizing a *de jures* dependency status.

The citation is *Kagama*, 118 U.S. 375–1886. If you would like a specific quote from the case I am talking about:

> It seems to us this is within the competency of Congress. These Indian Tribes are wards of the nation. They are communities dependent on the United States, dependent largely for their daily food.

And I will skip now—

> From their very weakness and helplessness so largely due to the course of dealing with the Federal Government with them and the treaties which has been promised, there arises the duty of protection and powers.

Many of the cases we are talking about, and they are in fact, predating treaties, with the Commonwealths, with England, with France, and so on, that it is the concept of dependency through a course of dealings.

Mr. MEEDS. Is there any indication that the delegation of responsibility for treaties which may have been signed by individual Colonies for other nations has been accepted, by the Federal Government?

Mr. ALEXANDER. Without being specific, there is a concept in international law that when a legal body takes on the obligation of the preexisting legal entities, that also, although they do not necessarily—they could and perhaps they should have, and that would have made life a lot easier historically—at least on a conceptual basis, they took on the obligations of the preexisting political entities that in fact became the United States.

Mr. MEEDS. I think we recognize all too well what the Federal Government has dealt with and has provided services and admitted responsibilities for many years through its lead agency, the Bureau of Indian Affairs, to those Indians who are members of recognized tribes. By the same token, the Government has generally denied that responsibility to people who are not members of recognized tribes. I know there are exceptions. Now, on what does the Bureau of Indian Affairs and the Federal Government premise this denial of responsibility? Do they recognize the Kagama doctrine and if not, why not?

Mr. ALEXANDER. In a letter to Senator Jackson on the Maine decision laying out what the criteria for what Federal recognition should be, or are, the Department set out five criteria which in fact, incorporate to some extent the Kagama doctrine. The problem is not necessarily the Secretary of the Interior, the lead agent of the United States, does not recognize, at least in that letter it is recognized, the doctrines and the concepts; but they are not applied.

There are a number of requests for recognition that are in fact, not acted upon. And that gets me jumping a bit to what we have made the basis of our recommendation which is shifting the burden of proof in administrative procedures to determine the historical political relationship between an individual tribal group and the United States.

If you like, I could read you the five standards the Department set out in relationship to the *Passamaquoddy* case. It is on page 1, chapter 12.

Mr. YATES. How many unrecognized tribes are there?

Mr. ALEXANDER. The best estimates that we have and this comes from task force 10, which approached the issue by trying to set up the demographics and the history of groups almost one by one. We are talking about almost 100 tribes, approximately 90. There is not a clear-cut number I can give you.

Mr. YATES. It seems to me this is a great number. How many Indian people are we talking about when we talk about under 100 tribes?

Mr. ALEXANDER. I cannot give you an exact answer to that. The data collection for those individuals, which is primarily census-based, is viewed as being exceedingly inaccurate. Most of the groups that would fall within that group of the 90 are relatively small. There are a few groups including the Maine tribes and the Lumbees that would number in the thousands. Most of the groups would number anywhere from 50 to 200.

Mr. YATES. What is the total of the census-recognized Indian people in this category?

Mr. ALEXANDER. This is memory, and I will go back and put the exact figure in the record, but I believe it is about half a million people in the recognized category.

Mr. YATES. Since the *Kagama* decision, almost 100 years have gone by. Why had there been no recognition prior to this time? I know you have the five standards that appear on page 1 of your report, but if those have been onerus and prevented recognition, and then why has there not been an effort to change those standards, supported by some strength?

Mr. TAYLOR. Congressman Yates, my name is Peter Taylor. I was with Interior for about 5 years, and had occasion to read some of the files relating particularly to the *Lumbee* case that resulted in a decision in the District of Columbia circuit. The title of the case is *Maynor* v. *Morton*, in which 22 Lumbees were recognized as Indians within the meaning of the Indian Reorganization Act.

In the Solicitor's file in that case, there is quite a lot of historical information relating to the Lumbees. Commissioner Dial and I have talked about this. In the very late 1800's, the Lumbees asked the Bureau of Indian Affairs to aid them in their school system and provide money for the operation of their schools. Interior had never heard of the Lumbee Indians before. This was their first knowledge of them.

They did look into this matter and came to the conclusion that, yes, in fact, these were Indian people. The response of the Commissioner of Indian Affairs to the request for these funds or any form of recognition is, "We don't have enough money to do our job now, and before I recognize any more tribes I have to have more more in the pot."

Money, I think, is the practical basis for nonrecognition.

Mr. YATES. You mean over the whole course of almost 100 years, this has been the deterrent toward recognition?

Mr. TAYLOR. As far as the Lumbee situation is concerned, that was it. I believe it is a very guiding principle and a practical one, too.

Mr. YATES. How does this relate to the five standards you have in your report? What you are saying is the Bureau of Indian Affairs said we have no money. If they had money, would your five standards have been the test?

Mr. TAYLOR. Those five standards were set forth by the Bureau of Indian Affairs in a letter to Senator Jackson advising him of the criteria they recognized——

Mr. YATES. That should be fairly recent, then?

Mr. TAYLOR. It is.

Mr. ALEXANDER. The *Passamaquoddy* case.

Mr. TAYLOR. The letter is an exhibit in the report of task force No. 9. I can pull that letter or show it to you.

Mr. YATES. I presume it will be made a part of the record. But the thing that puzzles me is you have so many decades go by and the problem still remains. I don't understand why there wasn't any effort in the interim, any concerted effort, to try to change that situation to make available to the nonrecognized tribes the benefits that were accruing to the other Indians, the other Indian people.

Mr. TAYLOR. I think the explanation lies in the historic attitude of the Federal Government toward Indians. Indians were at rock bottom in 1934. The policy starting in 1887 was one of assimilation. The General Allotment Act as found in the case of *U.S.* v. *Draper*, was to wipe out Indian reservations and do away with the Indian governments. So, from 1887 to 1934, the policy thrust would certainly have been away from recognizing any Indians.

The 1934 act came in, and within 6 years we were involved in World War II, and people were not thinking about Indians, or hardly anything else. It was shortly after World War II when we went into termination. We weren't going to recognize any more tribes then.

The answer is the policies have been away from it.

Mr. MEEDS. I think it should be added, and it is probably the same rationale, there has been no effort on the part of recognized tribes to have more tribes recognized because they realized they would have a smaller part of the pie if a lot more services were to be made available to a lot more people. Isn't that a pretty standard understanding?

Mr. ALEXANDER. That is what I was referring to earlier. I think there is one further component to that. Most of the groups we are talking about are relatively poor and fairly powerless. So the *Passamaquoddy* case, which is viewed as a major breakthrough in this area under the Trade and Intercourse Act, would probably not have occurred had it not been from the fallout of the war on poverty in the sixties with the provision of legal services throughout the United States. There were not the instrumentalities available to these groups to be able to press their causes until the recent day, and that is a significant development.

Mr. Dial. You speak of the pie. Down where I come from, we have different sizes of piepans, you know. You have a small family, you cook a small pie. You have a large family, you use a different piepan. Sometimes you forget the round piepans and you just use a big biscuit pan and cook some pies. You can call it a pie. But it is not a small round pie.

Now, you fellows are going on the assumption that Congress has a fixed amount of dollars that cannot be changed and federally recognized Indians, it appears if they fight "non-federally recognized"—and I don't like the term and when this study is over, I hope we never use it again—they seem to feel you can only cook a pie so large.

But the U.S. Government in other areas seem to get as much as they want. They can cook a pie to go to the Moon, they can cook a pie to do anything for anyone in the Nation or anywhere on the globe, and they have consistently denied citizens here, the first Americans, some of their basic rights. I would hope that this pie business would not continue.

You are right. It did happen in 1890. That was the date—it was my grandfather, W. L. Morris, who wrote Commissioner Morgan at that time concerning some funds for support. This was immediately after legislation was passed from the North Carolina General Assembly in 1887, establishing what is today Pembroke State University, a university with approximately 2,200 students, and 500 or 600 Lumbee Indians. That was the beginning of our education.

The Commissioner did refer to the fact they did not have enough money to take care of the Lumbees. Of course, we, as other tribes, and I am a Lumbee, as you all know, we have other tribes, federally nonrecognized, we have fought various battles of recognition for many, many years. We never have had a treaty with the Government, yet some federally nonrecognized tribes had treaties at one time.

It was never necessary that we have a treaty. We held on to a good portion of our lands. I am proud to say I have 250 acres of that good land where the Lumbees have always lived, and some of the individuals own as much as 1,000 acres. But on the other hand, we do have a lot of poor people and we are concerned with services for Lumbees.

But getting off of this subject right here, the question comes to my mind: What is an Indian? What is a federally recognized Indian? And what is a federally nonrecognized Indian? And who has the authority to say who is Indian and who has the authority to say you are not Indian?

I was born and reared in an Indian community. I recall after earning six battle stars in World War II and trying to enter a white tobacco warehouse where a square dance was taking place, I was told "No, you can't go into this place." First the individual says to me, "Are you from Pembroke?" I said, "Yes." He said "Are you Indian?" I said, "Yes." He said, "Well, you can't go in. This is for whites only. And I said "OK," and I turned away.

I was denied all of this for many, many years, well up until the present, if you want to put it that way. The white people there still feel there, you know, they have something on Adolph Dial—which they don't—but unfortunately they feel that way.

It would be hard to tell me I am not Indian. If I pull my driver's license out, a local white fellow issued them. He did not say, "What is your race?" He just put "Indian" on these drivers' licenses. I have them if anyone wants to see them.

Then, I would hate for the Secretary of the Interior to tell me I am not Indian. I don't like the idea of the Secretary of the Interior saying, "Well, you are not recognized by the U.S. Government" I would not mind him saying, of course, we are recognized as a result of 1956 legislation, but I am sure everyone of the nonfederally recognized tribes, they don't want the Secretary of the Interior to say, "No, you are not recognized."

I believe a community should determine, and here I am giving you a report, I believe a community should determine, a community of Indian people, who is Indian and who is not, and I am sure you would agree with this.

This, then, leaves the problem of who is going to determine whether or not you are a tribe. Will you answer that question?

Mr. ALEXANDER. I think there are two things contained in your statement. One of them is the acknowledgment of an historical cultural, political fact of Indian existence. The other is a political doctrine. And that has its components, it has its origins in international law. The United States, as a government, may recognize the Government of Mainland China or it may recognize the Government of Formosa. That recognition is a political fact. It does not necessarily deny the existence of the fact the people residing in either of those places are Chinese.

I think in our discussion and why in our recommendations, we tried to separate those two components to deal with that. The lack of political recognition for many of the tribes we are talking about seems to at least connotatively carry over into a denial of Indian existence.

We are trying to approach that in our recommendations which you and I have discussed for a long time. A separation of those two factors, which is why the first recommendation on page 12 states: It is the policy of the United States to recognize all American Indian tribes or aboriginal peoples of the United States and acknowledge their ongoing identity without regard to the political relationship which may exist.

That is just saying Indian people are Indian people and we will have to move on to decide what the political relationship is in other contexts. That comes from the views expressed by the many tribes in the field hearings held by Chairman Hunt in Task Force 10. There is just an incredible anger and emotional frustration at the notion that they are somehow not Indian, regardless of the social services that may be delivered or not delivered, and the political relationship between their tribe and the United States.

We tried to separate it out as a separate concept.

Mr. MEEDS. In the five criteria, I assume you feel it is not meeting the collective requirements which constitute recognition, but meeting only one requirement. Is that what the task force said?

Mr. ALEXANDER. That is correct.

Mr. TAYLOR. If I could address myself again on the recognition, I have the letter the BIA wrote to Senator Jackson. The date of it is

June 7, 1974. It lays out the five criteria that appear on page 1 here, and the page 1 thing is a verbatim quote from this letter. The question Senator Jackson asked, or at least one of the questions, is, "How many tribes in the past 20 years have been recognized by Interior?" They list nine tribes. It will take a second to run through these.

They indicate what authority was used as the basis for that recognition. I happen to have been involved in discussions on this letter at the time it was written. It took Interior at least 6 months to write a reply to Senator Jackson. The fact of the matter is, they had never shaken out their criteria. So this was a breakthrough.

As a matter of fact, it was somewhat controversial, even the five that were listed, and they were stretching legal authorities.

The first tribe they list is the Menominee tribe and they cite the Restoration Act as the basis for that.

Mr. MEEDS. Which is a separate issue.

Mr. TAYLOR. Then they add eight more: The original band of Sault Ste. Marie, Chippewa; Yavapai-Tonto Apache in Arizona; the Nooksack in Washington State; Burns Paiute in Oregon; Upper Skagit of Washington; the Sauk Suiattle in Seattle, Wash.; the Coushutta of Louisiana; and the Miccosuke in Florida.

There is a rather interesting story behind the Miccosuke Tribe. I understand they apparently petitioned Fidel Castro for recognition and Cuba was getting ready to recognize them and the State Department called BIA and said, "For God's sake, we have to do something about this." So BIA recognized them as a tribe.

Mr. DIAL. The Miccosuke Tribe, did they not recently organize; aren't they really the Seminole Tribe?

Mr. TAYLOR. I am really not that familiar with their history.

Mr. DIAL. Aren't they a political band?

Mr. TAYLOR. They are recognized now by BIA as being political. They may have permitted them to reorganize under the Indian Reorganization Act, which No. 1, recognizes existing tribes, but also provides the means by which groups of Indian people who, let's say, do not have sovereignty recognized through the treaty process——

Mr. DIAL. Miccosuke did not appear in the history books prior to the fifties, did they?

Mr. TAYLOR. Not to my knowledge.

Mr. DIAL. I have visited in the area.

Mr. YATES. With respect to your response to Senator Jackson and the recognition given to the tribes you itemized, did each of those tribes meet all of the criteria listed on page 1 of your report?

Mr. TAYLOR. I am not sure I could answer that.

Mr. YATES. Your colleague to your left shakes his head no.

Mr. TAYLOR. I would be inclined to agree with Mr. Alexander. I would think probably not all of them did meet it.

Mr. YATES. If that be true, what is the sense of setting forth a list of criteria?

Mr. ALEXANDER. I was shaking my head because I understood your question to mean each of them. They met one or more of the five criteria.

Mr. YATES. Is that the test? I thought they had to meet all of them.

Mr. ALEXANDER. No.

Mr. YATES. But each of the tribes did meet one or more of the standards established by the BIA?

Mr. ALEXANDER. Yes.

Mr. TAYLOR. As to the five criteria listed on page 1, this is not our recommendation; this is a finding of the criteria the BIA is presently using. Our recommendations go beyond this criteria.

Mr. YATES. I understood these were the criteria specified in the letter of Senator Jackson by BIA that it was using as a means of recognition?

Mr. TAYLOR. Yes, sir.

Mr. YATES. In respect to my questions before, I think you still did not testify as to members of nonrecognized Indians in the country. I don't remember that you answered that; did you answer that?

If you can't answer it, would you supply it for the record at a later time?

Mr. TAYLOR. Mr. Alexander said there were approximately one-half million. This is a figure I have always heard, too. Approximately 500,000 are recognized; approximately 500,000 are not recognized.

Mr. DIAL. About 200,000 on the east coast?

Mr. ALEXANDER. The problem with figures is the way the data is generally collected indicates service populations. The second half million figure includes both members of recognized tribes residing off reservation either in urban areas or rural areas, and nonrecognized Indians, and it is not very clear from any of the data systems existing exactly what the breakout between the two is.

All we can say for certain is there are approximately one-half million people in the existing service population of the BIA and the IHS, and how that other half million breakdown comes out, our guess is, an educated guess, is the majority would fit into a recognized criteria or standards of being members of the tribes who have a political relationship with the United States.

I think it is of interest to note of the nine tribes recognized, seven were recognized in the 1970's. The Miccosukes in the early 1960's, and 1967 is the next date. Senator Jackson's request was for a 20-year period. It shows you where the movement has been and it has been very recent.

Mr. MEEDS. If I may interrupt, recently within the last month, one additional tribe has been recognized. The Stillaguamish.

Mr. TAYLOR. That is correct. I would like to make an observation on these population figures.

Mr. YATES. What form does recognition take?

Mr. MEEDS. It takes the form of acknowledgment by the BIA, the Department of the Interior, that this is a federally recognized tribe and I assume that is by letter and by document?

Mr. YATES. This is a decision by the Secretary of the Interior?

Mr. MEEDS. Yes.

Mr. YATES. Or by the Director of the BIA, which is it?

Mr. MEEDS. Secretary of the Interior, although it obviously comes up through BIA.

Mr. WHARTON. With respect to the Stillaguamish, recognition was still not complete as I read the opinion. It was a limited recognition. So when we speak of recognition, I think we need to recognize that is not an absolute concept. With respect to the Stillaguamish, for instance, they would not take their land into trust. But I did notice they may take some of their land into trust based on considerations they would make a decision later, so recognition is not an absolute concept.

Mr. MEEDS. I think that distinction of tribally held trust land as a method for Federal recognition was always prior to the Jackson letter of 1974. If you had tribally held trust lands, you were clearly a federally recognized tribe.

Mr. TAYLOR. That is correct. The problem BIA had on this, particularly with the Sault Ste. Marie with that they did not have any land in trust status, therefore, BIA said, "We cannot recognize you."

But a person had left the tribe, I believe property in his will and the tribe wanted that property taken into trust, BIA said, "We cannot take it into trust, you are not recognized."

So it was Catch 22.

Mr. WHARTON. One other thing about the Stillaguamish, they were recognized in the Court in *U.S.* v. *Washington.* They had a treaty relationship of at least fishing rights.

Mr. DIAL. What would you gentlemen say to this business of recognition? It appears we won't find any new Indians, you know, in the hills or in the valleys or in the swamps anyplace; and yet, we have been fooling around with recognition for a long, long while. Therefore, the Government has gotten itself into real trouble for shirking responsibility they should have dealt with a decade ago and more than 100 years ago.

What do you suggest we should do now for recognition and at the same time keep, we will say, some group in New York City, 100 people, who have no Indian blood at all who decide they are going to get together and call themselves Indians? Certainly we will have to take care of that situation. But the Indian people who have been around now since before 1492, what do you really suggest for this in the way of recognition?

Sum it up for us.

Mr. ALEXANDER. I refer you to page 13 of this chapter. In general terms, what we are suggesting is an administrative procedure, whereby the burden of proof would be on the Secretary of the Interior to show that a petitioning Indian group does not meet one of the criteria, and generally we have used the same type of criteria, at the moment, that the Department of the Interior has used; that is not a final decision on our part but just a direction. That, once there is a decision that the Secretary cannot show that a group does not meet these criteria, these decisions, of course, in the framework we have set out, would be appealable to a three-judge Federal court and so on, that the Secretary sit down with the tribal group and negotiate out in specific terms what the components of that particular recognition would be and make a submission to Congress for whatever additional appropriations would be necessary for that particular agreement.

What is necessary to take into account here is that many of the groups that have been termed "nonrecognized," do, in fact, get a number of services in the education, and CETA, et cetera, areas. It would have to be a factual determination as to what are the existing resources going into that community, and if, in fact, there are any additional services required.

The reason we did this is because those groups, to the extent we are knowledgeable about them, are extremely different. Commissioner, you have expressed to me and to the rest of us many times that the Lumbees have no desire for the Federal land management/trust type relationship that many people conceive of.

Mr. DIAL. I cannot speak for all of the Lumbees. I would say a majority of the Lumbees are not seeking a reservation. But they do feel they are entitled to services.

Mr. ALEXANDER. I would say at this point in history, the testimony I have read and heard, seems to focus on social service components of what we would call the secondary components of the trust relationship.

Mr. DIAL. Since you are speaking of Lumbees, where would you say—out of the five there——

Mr. MEEDS. You are suggesting seven criteria, any one of which would suffice? I would say both (A) and (G) the Lumbee could meet.

Mr. ALEXANDER. You might also come under (C). I would have to look at the specific terms of the 1956 act.

Mr. MEEDS. Assuming we were to adopt and make this kind of recommendation, why do you feel the burden of proof should be on the United States, in effect to rebut that the group does not meet one or more of these criteria? Doesn't that impose a great burden on the Government and open the door for almost endless litigation and possible delivery of services before the fact?

Mr. ALEXANDER. Today, I think the door is open for endless litigation, basically because we do not have a pattern of the Secretary and his agents in the Interior Department acting in an affirmative manner.

Most of the litigation we have seen coming out of Maine, and I think what we are going to have to look forward to unless there is a shift in patterns, is endless litigation in each one of these instances. The truth of the matter is, the tribes do not have the resources to conduct such litigation.

The Secretary could clearly, with the resources available to him, make a negative showing in the type of example Mr. Dial pointed out. Where 12 people with no history decided for a lark, or for whatever reasons, to denominate themselves as an Indian tribe.

I think we have seen throughout most areas of Federal administration, a lack of willingness on the executive department to act affirmatively, so that Indian tribes continuously bear an overwhelming burden to get the Secretary to act. I think the Menominee example, for instance, on restoration and Public Law 280, is the kind of example the burden a tribe has to meet, and why the burden should be on the Secretary. You have the Solicitor's office, the attorney general, Bronson LaFollette of the State of Wisconsin, all saying there was better than a reasonable case that restoration, in a sense, voided Wisconsin's 280 jurisdiction over the Menominee.

But using the burden of proof that the Executive used through the Department of Justice, the Indian tribe could not carry the day, when most reasonable people would have given the Indian tribe the benefit. I also think this incorporates rules of construction used by the Supreme Court in Indian treaties and agreements. Indian people are entitled to the benefit of the language. It should be the Government's responsibility to show the opposite.

Mr. MEEDS. Whatever the justice or injustice behind it, the present situation is that certain groups, tribes, bands, have not been recognized. They have at least not shown they meet any one or more of the criteria which was proposed in the Jackson letter, or additionally, the two additional criteria which you set forth here in both (A) and (G). (A) and (G) as I see it, are new.

Mr. AXEXANDER. Correct.

Mr. MEEDS. What do you think of a recommendation by this Commission to establish a system and a time frame for recognition so there could be a concerted effort to give those groups, tribes or bands who seek recognition, a forum before which they could present their evidence. Within a specified time, the group would be recognized or not recognized by that forum. So, in effect, everybody would be recognized until they are proved not to be recognized.

I have personal antipathy or reluctance to, in effect, say everybody is included until they are excluded. I think the thing should be exactly the opposite: the present status should be maintained until and unless the criteria or criterion for recognition is established.

If there is no objection from the Commission, I would ask you to draft an alternative recommendation which would establish a system for tribal, group, or band recognition and a time frame or method for granting such recognition administratively.

Mr. ALEXANDER. I think what we were talking about, and our thinking is still somewhat vague in this area, is an administrative procedure. I think the point we were trying to make is that in fact nothing would change until there is Secretarial action, until there is a submission to Congress for additional appropriations, but what we are talking about is a presumption when the Indian group comes in, in whatever manner and into whatever forum, there is a presumption via the statement of Congress in favor of recognition unless the Secretary, or whatever administrative agency it is, shows there should not be recognition for failure to meet certain broad, general standards.

The presumption, I think, is fairly important.

Mr. MEEDS. I view that, Paul, as a mandate for inaction.

Mr. ALEXANDER. It could be tied in the system you suggest as a time frame for secretarial action and so on.

Mr. BRUCE. Mr. Chairman, would you change the alternatives established here——

Mr. MEEDS. I am asking the members of the staff to draft an alternative recommendation which we can accept or reject alongside of the present recommendation which is made by the staff when we meet at the later date to make our definite recommendations about what the final report should contain.

Mr. YATES. Aren't you really asking for a time period? Really, what we are doing is saying let them come in by a certain date. All the witness is indicating is the staff wants the opportunity for nonrecognized nations to file. What you are saying is let them file but let them come in by a certain date.

Mr. MEEDS. Yes; by a certain date and with the burden of proof being on them rather than the burden of proof being on the administrative agency, whatever it happens to be, to show they are not recognized.

Mr. YATES. How difficult is proof?

Mr. ALEXANDER. Proof is not difficult in the sense it does not exist. Proof is difficult in terms of the economic legal, historical resources available to the individual groups, that would come under whatever procedure we adopt.

Mr. YATES. You are saying proof is difficult?

Mr. ALEXANDER. Proof is there but it is difficult to obtain. That is the distinction I wish to make.

Mr. MEEDS. I might disagree with you very quickly. I think, for instance, the Lumbee Tribe which is now nonfederally recognized, could come in under (G), showing two contracts with the Department of Labor for CETA programs or for receipt of grants under the Indian Education Act of the Office of Education, and qualify very quickly.

Mr. ALEXANDER. The circumstances vary between these groups.

Mr. DIAL. We are not exactly nonfederally recognized. Where you say the Lumbees are nonfederally recognized, if you don't qualify it aren't you overlooking the 1956 legislation?

Mr. MEEDS. You will have to refresh my recollection.

Mr. DIAL. That was Federal recognition of the Lumbees in 1956. That was not for the Bureau services.

Mr. MEEDS. That would be another of the criteria under which the tribe could then qualify.

Mr. DIAL. I did not want the record to show that the Lumbees were not federally recognized, because if you say that and let it go at that, you are saying the Congressmen in 1956 did something but they didn't know exactly what they did.

Mr. YATES. I asked about difficulty of proof, but there is more to this than difficulty of proof. There is a question of who do you prove it to. Who do you propose to prove it to? Do you propose proof be made to the BIA, the Secretary of the Interior and congressional committees or a separate forum? How do you propose to dig up the proof? Do you propose the nonrecognized tribes be given the material assistance with which to find and present their proof or will they have to do this on their own? If they are as impoverished as your testimony seems to indicate, they won't be able to do this.

Third, the chairman indicates there is a question of time frame here. What is an appropriate time frame in order to provide the proof? What kind of forum do you have in mind? Do you propose Congress set up a separate administrative forum to hear this just as they did in connection with Indian claims before the Indian Claims Commission, or the Foreign Claims Commission for foreign claims? How do you propose this be done?

Mr. ALEXANDER. In the proposal we were making, and I will have to distinguish between the two, I guess coming off of the notion of the lack of resources among the individual group we were leaving the administrative procedure within the Department of the Interior and focusing on the resources available to Interior, to determine the proof, which is part of shifting the burden on them.

If we were to go to a situation where the tribes bore the burden of proof and the Secretary is in a sense in an advocacy position——

Mr. YATES. For or against?

Mr. ALEXANDER. It would seem in that kind of administrative procedure he would be representing the opposite point of view which I think would be inappropriate—it would be a conflict of interest.

I would go for the administrative procedure outside of Interior. That there is a lot of thinking that has to go into an alternative.

To be honest with you, we have not addressed all of the permutations as to whether or not Interior should through grant-in-aid provide for historical research for a period of time.

Mr. YATES. Isn't this of extreme importance?

Mr. ALEXANDER. Oh, yes.

Mr. YATES. If, in fact, the Commission does approve a time frame, the chairman seems to have suggested, it becomes of extreme importance to lay out a program of assistance, if you will, to your nonrecognized tribes who want recognition. It seems to me, that carries with it the necessity for an appropriate form with which to present their petition after they have been fortunate enough to be able to dig up the proof that will give them the opportunity to be recognized.

I don't know whether the Commission can do this or whether it is up to the task force to do this.

Mr. TAYLOR. I would like to respond to that a little bit. We have here our preliminary recommendations covering a broad scope of things. I made this comment with respect to another recommendation and we have been making it all along, sort of disclaimers, getting ourselves off hooks. But I would like to say I think there is a lack of addressing the mechanical procedure by which this thing could proceed.

I don't think it would be very difficult at all. To me, my notion on it would be a group that considers themselves to be tribal would submit a petition to the Secretary of the Interior. This assumes Indian Affairs stays in Interior. Submit a petition to the Secretary for recognition. If they can meet and show evidence of any of this criteria, the Secretary should recognize them. The legal burden should be on him to recognize them. If he denies recognition, a provision for a hearing before a Board of Hearings and Appeals or whatever, a hearing examiner-type mechanism, would be provided within this agency.

Mr. YATES. Can you tell us how many of the groups that you know about could easily meet one or more of these criteria?

Mr. TAYLOR. I cannot answer that question. I was not involved with task force 10. Frankly, I do not know. They have identified, I believe it was 74 groups they feel have some tribal backing or history.

Mr. ALEXANDER. The problem we face as a staff at this point, is that the task force 10 did not get into any of the mechanics of any of the recognition procedures. The general recognition scheme you have is our thinking beyond the task force. What the task force did, as Peter said, is something we have to take many steps further.

Mr. TAYLOR. I feel developing the mechanical procedure would be very easy to do. In fact, I think I have just laid it out. With the right of appeal to either a three-judge court or the U.S. District Court; from an adverse order out of that Board of Hearings and Appeals there could be judicial review.

Mr. ALEXANDER. There have been possibilities, and we have been talking about burden of proof which many of us perceive as a problem, that a tribe coming in only has to be able to meet a preliminary burden of proof and then the proof shifts to the Secretary.

There are a number of interim notions we could work out for you on alternatives.

Mr. YATES. You have indicated a tribe received recognition, in this letter to Senator Jackson, how many were turned down?

Mr. TAYLOR. I don't know.

Mr. YATES. It is something we ought to find out. If any were turned down and the reasons for turning them down.

Mr. TAYLOR. There was resistance to the Passamaquoddy. That required a lawsuit. There has been resistance to the Stillaguamish, which are now being recognized for the first time.

Mr. YATES. Assuming more than one was turned down, do they have any right of appeal? Can they go to court and ask for recognition?

Mr. TAYLOR. Apparently they can. The Stillaguamish actually filed a suit and Interior has acceded. To me, I would have questions about it. It is a matter of political discretion.

Mr. YATES. If it is a fact they can go to court and obtain recognition, why don't they do so? Why do we have to set up all of this?

Mr. ALEXANDER. Going to court will only answer one part of the question. It also contains the disability for many of these groups that they do not have the financial wherewithal and the access to attorneys to litigate these cases which may require going way beyond the Federal District Court level.

But once the recognition thing is acknowledged by a court, and oftentimes it does not come up squarely, in the Stillaguamish situation, it comes up with relation to hunting and fishing rights. In Maine, we are talking about getting the Department of Justice to intervene in the case. The extent of that recognition, what it means in terms of status, is left completely open.

We are suggesting a combined administrative procedure that in essence takes two steps. One is the initial recognition question and the second is what are the components of it? That second thing would still be necessary.

Mr. YATES. You are going to have to provide some kind of assistance whether they come before the Interior Department or the court, aren't you?

Mr. ALEXANDER. Absolutely.

Mr. YATES. One of the fundamentals is to provide the material assistance to prove their rights.

Mr. DEER. I would like to speak to the point of the burden of proof and respectfully to disagree with you, Commissioner Meeds. I feel it is a tremendous burden on the tribe to take on the Department of the Interior; take on the Congress. I don't know exactly how much it cost the Menominees to carry on the battle for restoration, but I know it was thousands of dollors. We marshaled the best talent, legal talent, the Native American Rights Fund, the Wisconsin Judi-care under OEO, and without this excellent legal assistance, we would not have gotten anywhere.

I feel there are a number of tribes that have been denied recognition that do not have access to legal help, that may not catch the fancy of some foundation or other group; I feel even though we have made excellent argument on all of our points, we still have not prevailed in some of our arguments in the Department of the Interior which gets into our next point about construction.

I hope the Commission will take a stand on this particular point. I feel tribes do need help in historical research and legal research and the burden of proof should not be on the individual tribe or group, but there should be some mechanism worked out whereby the Department of the Interior or whatever Department it is, has to assume the burden of proof.

I think the Federal Government has more resources than the Federal tribes.

Mr. MEEDS. I am not necessarily saying the machinery set up should not provide funds and historical research and other things, which might be required to establish identity as a tribe, a group or a band. But I am suggesting that we establish a mechanism and a timeframe in which we are going to either recognize people as tribes, groups, or bands, or we are not going to. We must get some finality to what is the group of specially recognized people. We can't let this thing drag on forever with the burden of proof being on the Federal Government to show they are not furnishing services to certain people because.

That is all I am saying. I hope in drafting the alternative recommendation, the staff knows that I am not trying to necessarily limit the group, but I am trying to establish a procedure and a timeframe in which that recognition would take place.

Mr. TAYLOR. There is no difficulty at all in drafting an alternative. There may be a problem in fixing some sort of time limit. My inclination is against a time limit. I don't know what the feeling of the Commissioners generally would be.

Mr. DIAL. Mr. Chairman, I believe it is a matter we cannot settle this morning or today. By the next meeting in January 1977, we need to have a meeting right away with the staff and come up with something concrete, maybe with task force members of 10, and bring something concrete to the next meeting to vote on. Maybe several different plans.

Mr. ALEXANDER. No problem at all.

Mr. DIAL. That way we can work it out. But I think we need to work it out as much as possible so that staff will have some ideas on what to work on.

Mr. TAYLOR. I would like to conclude that comment on the time limit. I believe part of the problem is some tribes are so isolated they do not know what is going on. In fact, Chuck Downs, over here on my right, has been doing research on a group called the Tunicas in Louisiana. They were apparently not known to exist down there until very recently. But on an investigation they were clearly an Indian tribe.

Mr. DIAL. They were included in the report of task force 10.

Mr. TAYLOR. Yes, they were. My point is, some of these people are so isolated they are not aware of time limits. Second, I think the mechanism we are talking about is not complex. In fact, I believe it is extremely simple. It is not like the Indian Claims Commission. We are not having to set up special boards or anything.

But the other reason, and this goes back to your question, Mr. Yates, as to why we should adopt these criteria. Frankly, I think the Secretary of the Interior needs help. He stretched himself when he came up with the five. That was brand new.

I think frequently the Secretary takes criticism on situations where it is not quite fairly laid on him. I am certainly no advocate for Interior, for the Secretary, but here is a situation where there are no congressional guidelines for him to follow. He reached into some pretty wild authority to come up with these positions he has.

I believe a little congressional direction and help would be very helpful to the administration of his office, as well as helping the Indian people involved.

The Snyder Act certainly authorizes expenditures for the benefit of Indians, but the fact is, it was really adopted more to resolve a procedural problem that existed in Congress on appropriation matters.

I don't understand the exact mechanics of the problem, but apparently appropriations bill could be blocked by a single objection. The Snyder Act was intended to get around that problem.

Mr. YATES. But the language is not so limited. I don't think that has been the limitation the courts have placed upon it; has it?

Mr. TAYLOR. I think you are probably right. The *Ruiz* case that dealt with on or near reservation—the Snyder Act does not authorize a recognition type thing.

Mr. YATES. Of who is an Indian to be recognized?

Mr. TAYLOR. That is right. I think that is what we are trying to deal with here.

Mr. MEEDS. For the purposes of getting at least the alternative recommendations framed, I would suggest a time period of 5 years. The whole recommendation may be turned down, I don't know; but I would suggest 5 years. I would also go beyond that and ask that the recommendation contain a method and timeframe and criteria under which the tribe would then recognize its own members. We would then have a method for determining who is presently nonrecognized or recognized as tribes, bands or groups, and a method under which tribes can establish their own membership. As you can see, I am trying to get some recommendation, which will give some finality to what we are doing here.

Mr. YATES. Do we know, or do you know the monetary value of the services being lost, in services to nonrecognized Indians? What are they losing that is obtained by the recognized Indians?

Mr. ALEXANDER. I cannot give you a dollar figure on what it is exactly they are getting. To say what they are losing is hard to know, because in the views that I have heard, there is no indication that those groups on the east coast particularly, wish to have each and every component of Interior services. So until that is known on a case-by-case basis—that is what we were talking about previously on the negotiation out of each individual recognition framework——

Mr. YATES. What is the value of being recognized?

Mr. ALEXANDER. The value of being recognized would certainly be expanded beyond what they are getting now. What they are getting now relates to manpower programs, Department of Health, Education, and Welfare, title IV type programs, ONAP type programs, similar programs. It would not have a lot to do with any of the funds to support governmental institutions. That, in many of the cases, may not be desired and may not have anything to do with tax immunity, which is another factor, that would fall into this package.

It has nothing to do with resource development, resource expansion, technical assistance. It will really vary substantially depending on what group we are talking about.

Mr. Yates. I still don't know that you answered my question. What is the value of recognition?

Mr. Alexander. The value of recognition is access to a range of services not currently available. Two, the political denomination and protection a tribal group receives in that recognition framework, having to do with their tax status, their governmental status, and the full range there. That may also vary from State to State.

Mr. Yates. Would it be fair to say this would involve a tremendous amount of monetary value?

Mr. Alexander. It could involve a terrific amount of monetary expenditures. I could not project that with any specificity what that would be.

Mr. Stevens. I think this is a fundamental point. There is a resentment on the part of nonfederally recognized Indians, in that they need to be merely recognized as Indians just for the purpose of being Indians. The implication that because the Bureau of Indian Affairs does not have enough money they should be refused the special status of just being known as Indians is rather inconceivable. But that is the case. That is one of the main resentments of nonfederally recognized tribes, that the Bureau of Indian Affairs has the right to determine whether or not they are Indians in fact. This is like somebody being refused the right to be German or Irish or something. There is something other that I think needs to be expressed on this particular subject. There appears to be developing a kind of situation which, since the early sixties, since certain services began to be extended through other agencies, many people have been discriminated against as groups. Because in programs for minorities, for instance, I think Commissioner Dial ought to speak to that, some services, social types of services and other types of programs, poverty programs, and so forth, that started in the sixties, have been extended to Indian people who are not federally recognized, and when you refuse the right to be an Indian, then your particular group is denied the right to have these programs merely on the basis the Bureau of Indian Affairs has refused to recognize you.

What happens is, an Indian group in a certain area that is not federally recognized, is put in the position of not being able to have this service separate and apart as an Indian because they relied on the Bureau status. Yet, in fact, it doesn't make any difference in the budget. In fact, that budget will go to that particular State anyway. All they would receive by this is receive those funds separate and apart because they are Indians.

That does not have to do with the recognition of our people, federally recognized people, as political entities in which we prefer to be recognized through our tribe. It is a thing that is compatible if you could take it apart.

Mr. Dial. I would like to concur with what our Director, Mr. Stevens, said. Congressman Yates, if there were no funds involved at all, not one dime, Indians would be very much concerned with recognition. When you leave the Congress, if you do some day, suppose you had no retirement, you would still like the recognition of knowing that you served in the Congress. Yet there is no monetary value placed on it, without retirement, let's say.

We are very much concerned about recognition, the subject of recognition. Too, you don't know what future years will bring. It is hard to say what recognition will bring 10 years from now or 20 years from now. Certainly I would not see it hurting anyone. It would not have any damaging effects. And, too, I don't see recognition breaking up the U.S. Government. It is something the people have earned. It is really nothing to be given.

Mr. YATES. I am not talking in terms of whether it is given or whether it has been earned, Commissioner. What I sense from your answer is that there are two parts to this; one is recognition as being part of the Indian people, and second, it may have monetary value in the programs that are being made available to recognized Indian tribes throughout the country.

Mr. DIAL. You are on the right road.

Mr. MEEDS. Would it be fair to say in terms of Commissioner Yates' question, that if services which are presently available to recognized tribes were to be extended to all individuals and groups, who at least, conceivably could qualify under the criteria set forth in this recommendation, that we are talking about increasing appropriations and availability—at least availability of funds—by somewhere in the area of double to 50 percent?

Mr. TAYLOR. My reaction to that is, I don't believe that would be the case at all. The one we mentioned, these population figures, before—I wanted to comment on that.

Mr. MEEDS. I think that is what we have to deal with. We are dealing now through the services of the Department of the Interior with approximately 500,000 individuals who are recognized as Indians. I think by common definition, there are approximately 500,000 people who are not recognized, even though they may be members of a recognized tribe, but are somewhere in urban settings or otherwise. There are those who are or who could conceivably qualify as members of presently recognized tribes, and those who have not been recognized, and we are dealing with another 500,000 people there.

If you made the same programs available to all of them that are presently available to the recognized groups, the demand would double. But clearly that, I don't think, will occur. There are not twice that many who are going to ask for this.

Mr. ALEXANDER. I don't think doubling is quite accurate.

The reason is, there are a number of programs that go that are available currently; that go through States and various other organizations. What would happen with those moneys? I cannot say whether that is 50 percent of the moneys that would be needed, or 70 percent, or what have you is that they would be redirected; some, a significant portion of the funds are currently being expended by the United States.

It is oftentimes a question of who controls those funds. Does the tribal group control those funds or do they go through various mechanisms, CETA consortiums, State setoffs? Who gets the administrative expenses to run the programs. I think doubling would be a high figure.

Mr. MEEDS. I was not in my calculations dealing with those amounts. Many of those programs are being made available to the group we are talking about, the 500,000 who are not presently receiving benefits. I am generally speaking about the appropriations which Mr. Yates' committee suggests for the Bureau of Indian Affairs, which is somewhere in the area of $400 to $500 million.

Mr. YATES. It is over that. It is more than that. It is over $1 billion.

Mr. TAYLOR. Part of that includes tribal money. Appropriations are needed to authorize the expenditure of judgment funds; but that is a side point.

The other element, I agree with what Paul has just said. The point is, I think most of these tribes on the east coast, you are not going to be bringing in the same kind of administrative structure. I don't think they need superintendents or area offices. It appears what they are asking for appears more related to education funds, health, and manpower training.

Mr. MEEDS. Funds they may be receiving right now.

Mr. TAYLOR. Right. So I am not sure of the amount we are talking about, but nowhere near double. In fact, I question, in view of the kinds of services they are asking, I doubt if it would be one-third or more.

Mr. ALEXANDER. It was our view that until each individual tribe and the United States sat down and defined what that relationship would be, the total economics would not be known, and that is the reason we went to the notion of having the Secretary specifically, based on the agreement between him and the tribe, go to Congress with an additional appropriation or supplemental appropriation if that was necessary; that trying to take into account whatever expansion of the pie is necessary, Congress would have decisions before it on that and not be committing itself in this package to a complete unknown, but would have another opportunity to deal with specifics.

Mr. MEEDS. Do I understand you to be saying it would be very difficult to put a price tag on the recommendation?

Mr. ALEXANDER. Exceedingly difficult.

Mr. TAYLOR. I would like to ask my colleague a question openly. Mr. Langone at the Library of Congress is preparing a statistical survey of Indians, which I think includes poverty level, this kind of thing. Paul, would this help put a monetary figure on what we are talking about? Would it aid any?

Mr. ALEXANDER. It would aid some. It would be projections out of the studies done by task force 10. But I keep having to modify this. It would only be projections, to get some ballpark figure, if you will.

Mr. MEEDS. Have we exhausted that subject? Can we move now to your recommendations for action, other than the one which we have just covered, which is the recommendation for further recognition.

Mr. ALEXANDER. That is all we have asked you to act on at this time. Just going back to the first one of the recommendations on page 12, which has nothing to do with the monetary component or the political relationship between the United States and the group, and gets to Commissioner Dial's point and the point Ernie Stevens was making, to clear up the notion that if you are not a federally recognized Indian you are not an Indian.

It is a policy statement the Commission would recommend to Congress. I read it once, I can read it again if you wish.

Mr. MEEDS. No; that is all right.

Mr. ALEXANDER. To acknowledge the existence of Indian people generally. That is an important emotional point in Indian country. I cannot stress that enough. You gentlemen would have had to have listened to the individuals come up and say it over and over and over again, with deep-felt emotion.

Mr. MEEDS. I see a recommendation at least a finding, the Indian Claims Commission deals with the issues other than land claims. Would you go into that a little, please?

Mr. ALEXANDER. What page are you on?

Mr. MEEDS. I am on page 3, about the middle of the page.

Mr. TAYLOR. Mr. Meeds, that is a finding taken from task force 10. I frankly am not sure what all they have in mind. There have been claims put before them based on deprivation, or denial, or health, or education benefits.

Mr. MEEDS. This is not a recommendation?

Mr. TAYLOR. It is a finding taken from that task force report. If you could wait a coup'e of minutes for the answer, I would like to confer with someone from task force 10.

Mr. ALEXANDER. Everything preceding page 12 is summarized from the task forces. In some cases task force 9, task force 10, or task force 5. As a staff, we are not recommending at this time, any of those specific findings or recommendations be adopted. We felt it was important to get the general policy parameters established and then go back and deal with the various specific things the task force may have said.

Mr. MEEDS. Are there further questions of this panel with regard to chapter 12?

Mr. BRUCE. We are coming up with another administrative procedure to cover the seven or five standards now set up? There is a procedure for recognition?

Mr. ALEXANDER. Yes.

Mr. BRUCE. And we have it there in that first paragraph, in the background? Administrative device used by the Department of the Interior to delineate which America Indians shall receive the services and the protection of the Department. That is a device used now and that device was used, I guess, as far as the *Passamaquoddy* case was concerned.

Mr. ALEXANDER. One of these is the nature of what Congressman Meeds has recommended, we have also suggested shifting burdens of proof within an administrative framework, that there are various alternatives that could be worked out on time restraints.

Congressman Yates points out about the substantial lead-up time that Indian groups and resources that will be needed by these Indian groups before the mechanism could even be started. The 5-year thing that was mentioned might be appropriate once the mechanism is started. They may need to have a leadtime of 3 to 5 years with substantial resources before tribes could even trigger a mechanism.

We will try to go through all of these issues and lay out alternatives consistent with the notion contained on page 12, the first recommendation which is, that it be the policy within, the trust obligation if you will, of the United States to extend recognition.

Mr. TAYLOR. We will go back and provide these alternatives and administrative procedures or mechanisms. What I want to see today is some sort of consensus of policy that should be recommended. The specifics can be ironed out later.

Mr. DIAL. One important point while you are working on this. You ought to keep in mind during the 5-year period that you don't put any tribe in a worse position during the 5 years than they are at this particular time.

It is very important.

Mr. ALEXANDER. I understand, Commissioner Dial, and we will seriously think through all of the potential problems on any specific time frame. There are many. And we will give you our suggestions on those time frames.

Mr. MEEDS. Are there further questions?

Mr. BRUCE. The Department of the Interior has the right now to withdraw recognition; is that right?

Mr. TAYLOR. I don't believe they do, Commissioner. Congress has that. What Interior has done, and this is related to a different point, it goes to tribal government, they have withdrawn recognition of tribal constitutions. They have occasionally refused to recognize certain elected tribal officials. But they have no power to withdraw the recognition of a tribe per se.

The other issues I have mentioned go to problems of tribal government and it is one of the points we were addressing the other day of limiting the Secretary's authority on the internal affairs of tribes.

Mr. ALEXANDER. I might mention the authority to do what the Secretary has occasionally done in tribal elections and so far this is extremely questionable. Extremely. And that is a mild statement.

Mr. BRUCE. I recall the *Passamaquoddy* case where we worked hard to assist those people and where we were turned down by the Secretary and we proceeded anyway.

Mr. TAYLOR. I think the same problem exists with the Stillaguamish. Morris Thompson favored recognition and was vetoed by the Secretary for at least 2 years. In fact, the Stillaguamish had to go and file their law suit.

When confronted by reality, the Secretary did it.

Mr. MEEDS. Are there further questions regarding chapter 12? If not, thank you gentlemen, and we will move to chapter 9, Social Services.

I think we are close enough to the hour of noon. We will recess and resume with chapter 9, Social Services.

[Luncheon recess, 11:50 to 1:30 p.m.]

AFTERNOON SESSION

Mr. MEEDS. The Commission will resume its hearings. The first order this afternoon will be a presentation of chapter 9, Social Services, by Pat Zell. Please proceed, Pat. Please give us an overview of the entire chapter, including recommendations which we could then discuss in greater detail. Any Commissioner should feel at liberty to stop Pat and ask questions at any point.

Dr. ZELL. Commissioner, the main area I was covering—social services—deals with the placement of Indian children and the whole area of health services delivered to Indian people. The area of child welfare placement in social services is an area of critical concern to Indian people. If I may frame the issue, most Indian reservations are served by State social service agencies.

When a social service worker is called on the reservation to take a child out of a troubled home, a temporary placement of that child is made very frequently off the reservation. What happens is, the child is no longer on reservation property and comes under the State's jurisdiction.

The end result is many, many Indian children are placed in non-Indian homes permanently, and separated from their culture, families, and society. The recommendations that address this issue would call for tribal court jurisdiction over the placement of Indian children. Where that is not possible, and where a specific child would come under State jurisdiction, and it was a State proceeding of placement, that the tribal council would be informed and would be part of the decision as to where that Indian child would be placed.

Mr. ALEXANDER. This is on pages 5 through 7 we are talking about. I might mention this section is treated as a jurisdictional issue by the task force on jurisdiction and is backed up by a survey of 18 States conducted by the Association of American Indian Affairs on the child placement, adoption, and foster care practices in States with significant Indian populations and also statistics and testimony collected in field hearings or from State social service agencies.

One of the best set of statistics comes from the State of Washington, in terms of the data collection system, which I believe was produced for its testimony on the subject area.

Dr. ZELL. The next area is health, and I refer the Commission to page 39 of the section on social services. The major findings and recommendation in the area of health are drawn from the results of task force 6 and task force 11. At the time those two task forces submitted their reports, the Indian Health Care Improvement Act had not yet passed Congress. So an analysis of the act and its impact on the delivery of health care services and the health status of Indian people is not analyzed in detail in either of the reports. Because of this situation, we feel it is critical Indian people and the Commission have time to analyze this.

Mr. MEEDS. Could I ask you to back off and give us a general overview of the entire chapter, which would include such things as what task force reports are included, what areas of concern were addressed, before you start getting into the specifics of the recommendations?

Mr. ALEXANDER. This is a general chapter that comes from at minimum at least four to five task forces. It deals with education, health, State social services. Within the health framework it deals with alcoholism, drugs; it also deals with some information on corrections which were pointed to by at least two task forces. So within those two subject areas, we have broken down the recommendations from the various task forces. The major sections are health and education.

You will notice in this chapter there are substantial gap areas that are not covered by any of the task forces. The whole system of State and social——

Mr. MEEDS. What are those substantial gap areas?

Mr. ALEXANDER. The whole system of State social services, and how that impacts, and what the problems or the benefits, conceptually at least would be, is not treated by any of the task forces in a comprehensive manner.

The issue of juvenile delinquency, juvenile services, outside of the child placement area, is not treated comprehensively by any of the task forces. Our own view is in alcoholism, mental health/drug abuse area, the treatment by the task forces was substantially insufficient. The treatment by the task forces in those areas dealt with funding and mechanics of some of the existing programs and did not get into the basic conceptions of causation, mental health theories, alcoholism theories.

We view those as substantial gap areas.

Mr. MEEDS. Were the task force reports in these areas finished?

Mr. ALEXANDER. All 11 task force reports have been submitted as finished. Within the State social services framework, the whole welfare system, the BIA welfare systems, State welfare systems, practically no material is contained in this chapter on that area.

Mr. MEEDS. How do you plan to augment if you do the final report of the Commission to make up for those so-called gaps?

Mr. ALEXANDER. It varies in each area. In welfare, which we discuss on page 2 of this chapter, what we have asked for is direction to staff to go through our files and existing research outside of the task force's, and basically make a determination whether, in fact, we can with the staff and resources and the existing research, fill that gap. There is some material available in the files. We have not had the opportunity to determine whether or not that is fillable.

My guess is that this is going to remain an unfillable gap. Part of that comes from, and I want to make it clear, I don't think this is an excuse for the task forces but it is in the nature of an explanation, the organization of the task forces which was such that things fell through that could have conceivably been covered by three or four task forces which in the final result were covered by no one.

In the area of juvenile services, I think it is our view at the moment, that that area, juvenile corrections, juvenile services generally, is one which without substantial additional resources and field experience that we probably cannot cover, we will have to acknowledge this as a limitation of the report.

Ms. DEER. Can you tell us if there has been any review or analysis of the current literature in these areas of health, delinquency, alcoholism, and so on?

Mr. YATES. Are we talking about the Indian children and Indian problems on the reservations themselves or throughout the country, or where?

Mr. ALEXANDER. We are talking about both. To deal with problems of delinquency, in my view you would have to treat them separately, one in a reservation setting and what the resources, particularly in terms of how the law is written, in terms of is there a gap between general Federal law and tribal law in the area of juvenile delinquency, particularly the tribes that operate under 25 CFR; for example, in the child placement area. We treat it differently in terms of on reservation or off reservation.

The numbers require us where there is a significant identifiable social problem, with approximately one-half million people residing off reservation, to deal with those situations pragmatically in a separate solution area.

To answer your question, Commissioner Deer, the health task force did a general literature survey. I would say the alcoholism and drug task force collected a lot of materials. That analysis, if they did it, is not reflected in their report. It is our feeling in the alcoholism/mental health area there is a significant amount of material and research that exists that could provide additional bases for Commission action. We have not—I reiterate—had the opportunty in many of the gap areas to make an actual determination of what exists outside of the Commission. To some extent, we have a notion of what exists in the task force files as they were delivered to us.

Ms. DEER. That was my reason for asking the question. I feel there are many studies in these areas and that one of the tasks I was hoping would have been completed by one of these task forces would be to have an analysis of these materials in one place for all of us to see.

I realize again there is a short amount of time. I know I would be interested in seeing whatever analysis you would have done at this point.

Mr. ALEXANDER. I mentioned the health task force specifically. Although we have a bibliography attached to a number of chapters in the report itself, there is no way other than where it is specifically mentioned in the report where it infrequently is, to tell in fact how much of those bibilographies, those materials, were in fact utilized.

Other reports are extremely detailed in integrating support and resource material throughout the text of the report. You can get a fairly good idea of what has been used and what has been surveyed; but there is a wide range between those task force reports in quality.

This whole problem is most negatively reflected in these reports.

Mr. MEEDS. Does this task force cover education also?

Mr. ALEXANDER. This chapter does cover education; yes.

Mr. MEEDS. Maybe we could take these things by general headings and have you give us the general recommendations in each area. Education, mental health, if any, alcoholism, if any, juveniles, if any. Are there any other major areas covered by this?

Mr. ALEXANDER. Corrections.

Mr. MEEDS. Why don't we start with education?

Mr. ALEXANDER. Page 40 begins the chapter. Page 50 has the recommended Commission action. What we have done in the education section is similar to what we have done in the chapters we have been discussing the past 3 days. We have laid out a number of general principles in the education area, which if utilized as direction for the draft of this section, we would then go back and incorporate specific findings and recommendations. The thrust of the education section which comes out in large part from task force 5's report, but also significantly comes out from the direction taken by the individual tribal reports submitted to us and the stands of national Indian organizations taken on education generally, is that education should be controlled by the tribes and Indian communities.

If you had to say one thing about the material that was representative of this section, that was the major theme. That means the funding to those entities, participation in the local community in control of what in fact happens in those schools. The additional components relate to increased training opportunities for Indian educators, curriculum development, college students, and so on.

But the major premise or thrust of this chapter is control of education by Indian people.

Mr. Meeds. Should that control be subject to any kind of requirements for any prescribed courses or standards of achievement or delivery by either the State or Federal Government?

Mr. Alexander. By either the State or Federal Government? What I gather from the task force report is there is some disagreement on that point. One view is that the education of Indian children should be a partnership between tribes and the State. The other view which I believe is the view the task force report officially takes, is that the relationship should be between the Federal Government and the tribe, and that the Indian community or tribe should have significant input in developing or designing the curriculum and the standards that be applied in the local schools.

I guess the caveat to that is because people move from one school system to another and have to get into higher education institutions and the like, that the same kind of system where States work out what they are going to accept from each other and the same accreditation mechanisms for accepting and acknowledgment of a degree granted by an Indian school to be utilized to go to Harvard or UCLA or wherever, that whole mechanism would be somewhat applicable. And, clearly, of course, in the Federal utilization of funds there are a nbmber of guidelines, be they personnel, be they others, that have ueen attached with frequency by the Federal Government and by this Congress in the utilization of Federal funds.

I don't conceive of tribal control in this context as a totally unfettered apparatus, but more as removing the State primarily from interaction and taking off the administrative overheads which are necessary to run the local community schools, and having the tribal relationship and education be one to the Federal Government for running their school system.

The Navajo situation is most often cited where the tribe has created an education institution. There are a number of experiments going on there which have been doucumented in the task force report as well as other reports.

Mr. Meeds. I see recommendation No. 6 here relates to development of an accreditation system, and recognition by Federal and State governments that Indian schools are not subject to State regulations. That doesn't square with what you have just said.

Mr. Alexander. I think the concept there, particularly in relation to curriculum development in the teaching at traditional schools within those local systems, doesn't necessarily read that the Federal and State governments recognize it to be a mandatory recognition. It is a question of the same kinds of systems that have worked out for accreditation. If those standards that are developed to meet the local needs and controls are acceptable to a particular university system, they will recognize and acknowledge it; if not, those two institutions negotiate and recognize what changes have to be made. In the University of Maryland, in the State in which I live, they established certain graduate schools which were not accredited. Antioch College of Law in the District of Columbia has gone through a several year process of obtaining accreditation.

But the concept here is there are many things unique in the individual Indian communities that wish to be integrated into the school system. Navajo medicine men, if you will, the use of traditional crafts and culture as part of their curriculum. Those things generally cannot come in under States standards of accreditation.

I don't think the notion at all, and I can be corrected on this, is to get away from quality but to redefine quality in a local, meaningful context.

Mr. MEEDS. What if that is not meaningful in terms of participation as citizens of the United States? And these should be Indian people.

Mr. ALEXANDER. I am not sure I follow the question; I am sorry.

Mr. MEEDS. Let's assume there are certain basic communication skills which are required for people to hold jobs in our society, for people to exercise their rights and prerogatives as citizens of this Nation in voting, in participating in self-government, and other things. Let's say that an education system decreed by a local school board, an Indian controlled school board—and I am all for Indian-controlled schools boards, incidentally—does not require those standards be met. Let's say they are just minimal.

Would you suggest this Commission make a recommendation which would not require those basic standards to be met, not only to these people as Indians but as citizens of the United States?

Mr. ALEXANDER. I think this gets us back to our discussion of Saturday, and the first offer of principle in tribal government, we suggested, as staff, that the evidence is fairly overwhelming which is the presumption should be that Indian people act in a reasonable, rational and just fashion. If it turns out Indian-controlled education somehow does not equip Indian people to function effectively, Congress retains the power to act.

However, I would suggest within existing law attached to some of the programs we funded, and I am a little fuzzy in this area, we have as a government, required certain standards to be met in the use of Federal funds. Most of the education moneys we are talking about at this point are Federal moneys.

There is no showing, there is no evidence I am aware of in the Indian controlled schools that are operating around this country to suggest the possibility that Indian people seeking to control their education, seek to provide anything but meaningful education. That education might be somewhat different than the county of Prince Georges would decide to maintain for their people, but there are divergences between all of the education systems in this country and what their emphases and focuses are.

There is, however, on the other side, a lot of evidence to show that even though there have been improvements, and significant improvements, in educational status over the past several decades, that there are substantial problems in the delivery mechanism for education for Indian students under State and county control.

My answer would be the presumption is—Indian people will act in their best interests and their best interests are clearly to provide the most effective education they can.

Mr. WHITECROW. This subject of education has been a large subject very close to my heart and very definitely, I think Indian controlled schools is an outstanding idea within those areas, whereby we have those schools presently established. However, when you start looking at turning over all schools as an example to Indian control, we must be a little bit realistic, I feel, in this regard. Unless we are looking at setting up separate individual boundaries for tribes, we must realize these young Indian people and adults alike are going to be subject to education, are going to have to be trained and they are going to be living within the entire continental limits of the United States and they are going to have to be educated to the point, with quality education, that would allow them to compete individually and collectively out here in the general society.

Take a look at title IV, (A), (B), and (C), take a look at the Johnson-O'Malley program, take a look at the Bureau Schools, both on and off reservation schools, you take a look at the higher education programs that are available and if we are talking about tribal sovereignty, I think we have been in violation of this particular aspect of it for many years.

Now, as I understand this total report, we were looking at returning sovereign rights of tribes and laying down the groundwork with hopefully a recommendation from this Commission to the Congress whereby those funds currently provided to fulfill those social services we are talking about here to the tribes, and if so, those moneys should go through the tribes. Currently, individual school districts are making application through many different avenues to get Johnson-O'Malley money, title IV money, 874 money, and if we are really in effect talking about tribal sovereignty, all of the funds the Federal Government is providing to fulfill these obligations to these tribes should, in my opinion, go to those tribes, be broken down by population, and those individuals who are citizens of those tribes develop those relationships with those tribes and go through their tribal government when they want assistance, thereby requiring all of the public school districts who are utilizing 874, title IV, J-O'M moneys, according to the tribe affiliation of their students, negotiate with that tribe for reimbursement for delivery of education facilities and services to those tribal members.

I think this is the only logical concept if we are in effect, talking about fulfilling our obligations, fulfilling treaty obligations to tribes. It must be funneled and centralized back through that tribal government, rather than having this maze, and I say a confused maze today by all of the various school districts and departments of education of the many States in addition to the Federal Government, thereby laying down the rules and regulations that those moneys be set aside to go through that individual tribal agency's office. And then, as a tribe, if it so desires, to contract under the 638 public law.

Then, they in effect would control the education because when you control money, you control education. That is my concept of really in effect returning self-sufficiency, self-determination and funneling those controls back through the tribe. I don't see that in here, Paul. I may be wrong, but I don't see it.

Mr. ALEXANDER. That would be consistent with the principle I am referring to that is essentially contained in No. 1 on page 50. That is an extrapolation of that and that would get more into detail than we were suggesting at this time.

Mr. TAYLOR. Commissioner Whitecrow, if I can be redundant of Paul, essentially what you have said is along the lines the task force 5 report recommended and also the plan we are trying to put out in extremely brief form here.

Our proposals track exactly what you are saying. It is to get the money directly to the tribes.

Mr. WHITECROW. I could not read that flow.

Mr. TAYLOR. It is rather vague because of the way we summarized it.

Mr. WHITECROW. What I am saying here is a school district, wherever it may be, if it has a certain number of Indian children today, they just say "are you Indian," and they send these various little forms home and the parents say, "Why am I getting this?" All of a sudden the superintendent of the school says I have got to find out how many Indian children I have in our school because I can get Federal moneys if I have Indian children.

The parents themselves, up to this point, 99 percent of the parents I have talked to have no idea why these requests are sent home through the students, and the only real change that I can see that would really bring this about is if we are talking about tribal sovereignty and fulfillment of Federal obligations to the tribe. Then the tribe should tell us how many members they have, the demographics of their population, statistics, et cetera, and then they in effect practice self-determination. Because they will know where their students are, where their members are, where they are going to school and they can look forward to really negotiating contracts with those various school districts.

Mr. TAYLOR. We are saying two things here. No. 1: The tribes be authorized to operate their own school systems. That was one point. The second point which I am now just realizing you are talking about, is as far as Johnson-O'Malley——

Mr. WHITECROW. Taking care of those children away from the tribal area.

Mr. TAYLOR. The tribe would be holding the purse strings, negotiating with the school system as to what would be provided.

Mr. WHITECROW. Yes, that is how I see it. I don't know how the rest of the Commissioners see it. But that is the way I see it. Those tribal leaders I have talked to have all indicated to me they want that responsibility as government officials of their tribes.

Mr. YATES. The last conversation was to the effect, the tribal leaders want funds not only for children on the reservations but off the reservations. How far off the reservation? Suppose they live in the cities? Can the parents of city Indian children send their children to Indian schools on the reservations?

Mr. WHITECROW. I don't see anything that would prohibit that if they so desire. But if the parents of those children in the city schools, if those schools were to receive any assistance, they would negotiate with the tribe of those students. It would create a little bit greater administrative workload.

Mr. YATES. Yes, it would.

Mr. ALEXANDER. That gets us almost into the whole off-the-reservation chapter. I think it is fair to point out there is some conflict in this area. The task force 8, which was basically urban and nonreservation Indians, the report has been somewhat criticized by a number of the urban Indian groups who would rather see money go directly to the urban Indian groups for negotiation on some issues, rather than a passthrough from the tribe.

There is not a clear mandate when you are going off-reservation to Chicago as opposed to the Gallup-McKinley School System where I think there is much more consistency of view. Many of the urban concerns were raised after the task force report was in fact submitted, that is the off-reservation report, and we on the staff have not totally worked out the differences 100 percent. There are options in that area.

That is an area where there are at least two viewpoints.

Mr. MEEDS. Could I ask a question at this point? Do I understand there are only two positions? No. 1, that funding and control of education for off-reservation Indian children be asserted through the tribes themselves, or, No. 2, through urban Indian organizations? Are those the only two alternatives?

Mr. ALEXANDER. The third alternative I mentioned earlier was a feeling, at least on some persons' part, that there be a coordinated or cooperative arrangement between the tribe and the State organization. I am not necessarily sure the urban position is one of total control but at least increased input and control for certain components.

Mr. MEEDS. Let's be specific. Let's take the Chicago school system. Let's assume there are 4,000 Indian children in the Chicago elementary and secondary school system, which I am sure there are.

Now, are you suggesting the direction for education of those 4,000 children in the Chicago school system be through an urban Indian organization or through assertion and funding by tribes to which those children may belong? Is that what this report is saying?

Mr. ALEXANDER. I don't think that is what this report is saying. I think it is saying there needs to be significantly increased input in terms of the utilization of those moneys that go to the school system, because there are Indian children in there.

The mechanism for the input is to have the funds pass through the tribe. That is one alternative. Clearly there is the notion that the generalized advisory committees that surround the use of some of the money we are talking about are not a mechanism that provides for significant and substantial input into the decisionmaking process of the local school district. When you do have Johnson-O'Malley money that is to be used for supplemental education and not for prime education, that you get the effect of courses dealing with culture, tradition, and history, if you will, that the advisory committee system generally is viewed as a failure in the education area.

We, as a staff at this point, to be very honest about it, are not taking a specific position on what these various mechanisms could be. We are recommending as a general principle on tribal control of most education moneys and a significant input. Clearly in the situations where you are talking about a few Indian children, or even a significant number of Indian children, hundreds and perhaps thousands of miles away from the reservations. We have not worked out all of the specific permutations.

What we are talking about is general policy now.

Mr. YATES. Does the report try distinction between funds for the education of Indian children and funds to the tribes for Indian health clinics? Should the money for Indian health go to the tribes, too?

Mr. WHITECROW. We are getting into an area I am really being pushed on back home, and if I may, I would like to expound on this a little bit.

Here we are, and we have completed now a management review of the Bureau. In that management review, that review was done to reflect the allocation of allowing of tribes to participate in the Self-Determination Act, thereby developing the budget processes for that tribe at the very lowest level.

The only way that the Federal Government can really in effect, concur with that budget process as I see it, is that they know how many people are going to be affected. As I see the budget process today, the Federal Government has no idea really about where these Indians are, how many there are, and who is an Indian, et cetera.

I know definitely of many school superintendents who have sent letters home to parents saying, "Are you Indian?" Even if your folks were scared by an Indian a hundred years ago, you are part Indian, so we can get some money in from this title IV for our school district.

I think by going through the tribe, and we are laying down a process of recognizing tribes, then by going through that tribe, a total realistic population; actual population, can be developed allowing the Federal Government to make a determination as to what are those responsibilities and really in effect, once and for all, fulfill those responsibilities monetarily to those tribes in the field of education, and in the field of health, and without that specific knowledge done at the tribal level.

This is one of the things that has really, in effect, torn many of our Indian people away from their tribes. They don't go back to their tribal government any more. In many cases, the Federal Government has relegated tribal organization to the level of a civic organization or fraternal or sorority order. Indian people have, in effect, forgotten their relationship with their tribal government in many instances. Therefore, they say I am an Indian. What does it mean to be an Indian? Are you affiliated with the tribe? Do you have any tribal contact?

If we are, as taxpayers in this Nation, looking at efficient utilization and delivery of money, we must go through that tribal government to fulfill our relationships. The tribal governments should be the ones to tell us, or to tell the Government, how many Indian people they have.

I personally felt when we started this study, that maybe the Federal Government is already providing enough funds to fulfill the responsibilities by treaty and other relationships; if somebody could just find all of the pigeonholes where these appropriations are hidden in this maze of confusion we have.

I think with this BIA management study, it really brings it home. That is why I support that management study so well. I think that in itself, will reduce the number of Federal dollars that will help us in this. It will identify the Indians once and for all and help erase this mark we have got against our country in letting our Congress fulfill those responsibilities; once we determine who the Indian people are through our tribes.

Mr. TAYLOR. I am not this familiar with the task force 8's report.

Mr. WHITECROW. Let me say that I will speak to the same thing on health.

Mr. TAYLOR. I can see some real problems on the mechanical delivery of this money at the urban setting. I share the concern you are speaking of though. All of a sudden, Indians are climbing out of every crack. It sort of is like with judgement funds—we had a situation reported in Montgomery County, in the Washington Post, last week which I will retrieve off my back porch and add to the file, but there is a new appropriation bill which authorizes allocation of money for Indian study programs. If you have an Indian in your family two generations back, you qualify. The number of Indians, identified Indians, in Montgomery County, quadrupled, I think, as soon as that new formula was there.

I do have trouble with the tribal control of funds in Montgomery County. Undoubtedly, the number of people out there are from a broad number of tribes. It would seem to me that would create genuine problems in administration of those funds, at the tribal level. I know the report here is saying tribes should have the right to create and manage their own schools, as far as the Johnson-O'Malley funds where the tribe prefers to leave their children in public schools, but assure they are given Indian courses and whatever other Indian programs are needed.

The recommendation is the tribe manage those funds and negotiate directly with the public school system. So within the reservation area, the tribe would have total control, I would say, in the vicinity immediately near the reservation, the tribe would have control over those Johnson-O'Malley-type funds.

The idea of identifying your own tribal membership to avoid this execessive number of people claiming to be Indian, with possibly no support at all—well, the identification of membership that Mr. Meeds was talking about yesterday, would lend some solution to this problem in the urban area.

Mr. WHITECROW. An enrollment card, citizenship card, or something.

Mr. TAYLOR. I detest the idea of carrying a card. I am a card-carrying Crow or something.

Mr. WHITECROW. Excuse me, Mr. Chairman, for dominating here, but this is a good point. At one of the presentations I made, I had a group of people when I was advocating, that we should identify our tribal members and our tribal members would like to be identified, if they had something that would say, look here, I can prove I am an Indian, because Indian is not right here in the color of your skin, it is in your heart and in your head, how you think, how you feel.

One fellow jumped up and said, "What the hell is wrong with you; Indian people won't carry a card." I said, "The hell they won't. They carry their driver's license, and they sure carry their social security card." This can prove to somebody they are an Indian; they will damned sure carry that card, too. I really feel that.

Mr. TAYLOR. I would stand silent.

Mr. WHITECROW. I would carry my card. Many times I have been mistaken for a Chicano, especially when I grow a beard.

Mr. YATES. How much money are we talking about here for Indian education? Has the task force estimated what it would be? Is it the same amount currently being made available for Indian education? Is it twice that amount; three times; what conclusion did you come to? And, how far do you carry the education cycle? Do you carry it from kindergarten through graduate degrees in college? What is your proposal?

Mr. ALEXANDER. The task force in a proposed piece of legislation. I don't have dollar figures, but this is the mechanism they are talking about; it is the creation of a national trust fund for Indian education with appropriated funds, the income from such a trust fund then would be used to support education.

Mr. TAYLOR. I would like to address the problem we were talking about earlier. I had a conference with Helen Scheirbeck. I am rather ignorant of the contents of that report. But I understand what is being proposed here, and what I would expect to develop as we develop this chapter, is first of all, whether or not a tribe wants to continue its association with the State or public school systems would be made a tribal option.

If the tribe elected to set up their own school system, that would be their option. The proposal would also encompass as an option to the tribe, they could work with the school system in establishing curriculum and, let's say, accreditation. However, again, it would remain tribal option to totally exclude the State school officials if they so choose.

I understand no recommendation is made on the accreditation problem on the national agency that is proposed. I think we could build in some minimum criteria here as to the types of educational programs that are considered to be bare minimum. But the accreditation problem does constitute a very real problem in the Indian education system, particularly in getting Indian educators. We talk about having Indian cultural programs in school systems, either public or Indian school systems. Many State requirements require a person to have a master's degree in education. What we wind up with are non-Indian educators teaching Indian people Indian cultural programs. It is an absurdity in itself.

Many of our school systems provide courses such as auto mechanics and pounding out fenders. I know the high school I went to did. I can see no earthly reason why Indian school systems should not be able to accredit or establish as a course, basket weaving and beading and various other types of things. So the accreditation problem is a serious one.

Mr. MEEDS. If I can stop you right there. I think you have come to a point where I can make it amply clear what I mean and then you can respond to what I am talking about.

Very good; they should teach courses in basket weaving and blankets and silversmithy, all of those things. That is fine. But the basic and fundamental element of the education, whether it be on the reservation, off the reservation, whether it be Indian controlled—which I would prefer to see, if it is on a reservation—or non-Indian controlled, has to be to provide the basic fundamental education that it takes to cope in this dominant society as citizens of the United States.

That is the point I am making. As long as that point is clear in the recommendations, and if it is not, I would propose it be made clear; I have no argument. I think it is beautiful to have them taught their culture and the additional things you would equate to pounding out fenders and things like that.

I don't think a lot of Indian people want to do that. They would much rather do a lot of things nearer their culture. But I personally insist that any education system is going to have to teach people to cope and to be productive citizens in this society.

Mr. Taylor. I understand the task force report does in fact, include this minimum certification.

Mr. Meeds. I began to get a little antsy that it wasn't coming through in the recommendations; coming through by the staff here.

Mr. Taylor. I think the major problem is escaping these inflexible State rules—I think we understand each other.

Mr. Meeds. Right. And there clearly has to be some bending of the so-called inflexible rules which will allow the kind of thing you talk about, teaching Indian culture by people who are steeped in Indian culture and may not have a master's degree, may not indeed, have any kind of degree.

Mr. Taylor. As a matter of fact, I would include that basic waiver on the basics of reading, writing, and arithmetic. Elmer Savilla, chairman of the Quechan Tribe, ran his own electronics store in San Diego for many years; he could certainly teach bookkeeping but he does not have a master's degree in bookkeeping, so some sort of system of certifying educators providing they have the ability to handle the course——

Mr. Meeds. That is what education or accreditation is all about; isn't it?

Mr. Taylor. Yes. But States are horribly inflexible about this.

Mr. Meeds. I know. I have been through vocational education on this. We have managed to make some bending of an otherwise, inflexible system. As long as that basic concept is kept in mind, I am satisfied.

Mr. Yates. Let's get back to the money again.

What is the recommendation of the staff? Is it to be from the Federal Government, the Commonwealth or the State? What level?

Mr. Alexander. As I understand it, it is entirely through the Federal Government. The element I was about to get to, and it comes out in several places, tribal resources, be it from taxation or what-have-you, be also utilized in supporting education.

Mr. Yates. Would this be an apportionment then between the Federal Government and the tribes of the education function? What about the States?

Ms. Scheirbeck. I have a few comments. We have a cost analysis study of this but I would hesitate to talk about that unless you looked at the entire report. We said what it would cost in terms of the boarding schools to do certain things, what it would cost in terms of title IV—that is not in the report, but it could be added. We have also, Commissioner Yates, done a complete biography of the literature survey. If someone would type it for us, we would be happy to add it to the report. That was one of your interests and would be one of ours also.

I would like to make the point that all of the task force members agree on; that is, there is not any clear policy in Indian education. And we did propose a vehicle for getting clear policy and in that vehicle we have suggested a way for the tribe and the State to negotiate with each other. But the vehicle is the method to set standards in the policy to deal with things like the accreditation issue and other items, and I would encourage you to look at the proposed bill which is a part of the recommendation.

I am sorry; I did not understand your question.

Mr. Yates. The last question was how will the money to pay for the education be derived; from the tribes and the Federal Government alone, or will the States make a contribution?

Ms. Scheirbeck. We are suggesting the Federal Government continue the compensatory type and supplementary efforts which they are now providing in Indian education. We are also suggesting tribal resources be added to that. We are suggesting States in revenues generated from tribes or Indian communities fund that money back into those areas for use in educational programs and purposes. That would certainly take some negotiations that we feel could be done.

Mr. Yates. What would you do with a situation such as we experienced last year with the Chinle School, where they were completely deprived of tax funds?

Ms. Scheirbeck. We would look at that very closely. We used that school district to project the cost analysis. I happen to feel one would have to have a sliding scale where a State and local school district on the reservation would not agree to put money up; and would have to ask the Federal Government to put up at least 90 percent of that money.

Mr. Yates. Won't the ultimate burden fall on the Federal Government?

Ms. Scheirbeck. Unless the Federal Government is willing to strengthen its enforcement powers, and I am sorry to say I don't think HEW is doing that very well, I think you are correct in your analysis.

Mr. Yates. What would the States role be?

Ms. Scheirbeck. We found it difficult to say what the State's role would be in Indian education. We surveyed all of the 50 States and that is included in the final report. We were not able to talk to you on that point; it was not clear what they said. I think the Federal Government has to decide what its policy is in terms of supporting Indian education. Are they willing to go 90 percent in some instances? If the State is not willing to put money up, are they willing to say, yes, States you have got to do it, at least 50 percent of this.

I think Congress is going to have to look at that very hard.

Mr. Yates. You are offering several proposals. But isn't your principal thrust a relationship between the Federal Government and the tribe and bypassing the States?

Ms. Scheirbeck. We are talking about all Indians in this report. We are talking about tribes; Indian organizations.

Mr. Yates. You propose bypassing the States then, don't you? Insofar as channeling the funds are concerned?

Ms. Scheirbeck. Yes; but we have proposed an interesting role for the State and that role is really in planning, in assisting the tribe in planning, and information gathering.

Mr. Yates. How does the State get paid? Out of its own funds? This would be the State's contributions?

Ms. Scheirbeck. Yes.

Mr. Yates. Do you have any idea of whether the States would approve this method of funding directly to the survey?

Ms. Scheirbeck. I asked that question in the survey and interestingly enough, many of them said "yes". I cannot quote the figures.

Mr. Yates. I find that somewhat surprising, I must say in all frankness. I had the impression States were using funds originally intended for Indian children for other than Indian children. Now you tell us the States are willing to forego that.

Ms. SCHEIRBECK. I am saying in the questionnaire, a number of the States said they would be willing to go this way. We looked at school finance formulas in a number of States, and we asked the question: Why couldn't Indian education be weighted in the finance plans like the handicapped is? And we got various answers from States; but I was also surprised by the answers.

I might say in our public hearings where we had local at school superintendents and school board members testify, I asked that question. It may have been the audience, but they did indicate they would be willing to play the role I have described.

Mr. YATES. I think that is fine. But I think the legislatures in these various States might have a different attitude. Do you believe so?

Ms. SCHEIRBECK. I don't know, Congressman Yates. I am just beginning to work with the States. I am doing a dissertation on this subject. So next fall I will be able to answer your question a little more directly.

Mr. MEEDS. Wouldn't it be easier in terms of funding to break it down into two categories. In the first is Indian children on reservations to whom the Federal Government presently owes, as far as I know, full responsibility for education with the States holding no responsibility, unless those children are going off reservation to schools which are controlled by local school boards. The second would be those children who are in the local school systems who may be Indians and who may be receiving some supplemental funding such as Johnson-O'Malley, impact aid, Indian Education Act or otherwise, because they are Indian? Isn't that a cleaner division so we can deal with not only funding but, with responsibility, with whether or not there will be Indian control or whether the schools are going to be controlled by local school districts?

Ms. SCHEIRBECK. I think we were trying, Commissioner Meeds, to give all Indian communities more of an impact, more of a say.

Mr. MEEDS. I agree with Mr. Yates. My experience has been that States, by and large, except when they have assimilated Indian children into their school systems, have been very reluctant to do anything special for Indian children, let alone furnish the basic education for them.

I think we are dealing in the real world here. If we set up structures, they ought to be structures with which we have some confidence and which will actually work.

Ms. SCHEIRBECK. I have to say in reporting what Indian people told us, the majority of nonreservation people felt—and we said this in the report—the Federal Government has an obligation to educate them as well.

Mr. MEEDS. I am one of the people who has been asking for much more outreach by Johnson-O'Malley, Indian education, and other impact programs which indicate a Federal obligation. So I have no problem about that.

But it gets to the point of what is the Federal obligation to 4,000 diverse Indian children in the Chicago school system, which is a system of 400,000 kids. And you don't use the same kind of mechanism on an Indian controlled school board in Chicago as you used on the Navajo Reservation.

Ms. SCHEIRBECK. What we suggested on that was the compensatory moneys, only we would use the title IV model for those people you are suggesting, the compensatory education money, come into the local education agency but where that agency refuses to work with the Indian parent committee, that the law be amended so that the parent committee could receive that money. We do have that kind of recommendation in the report.

Mr. MEEDS. So that would be for the Chicago school system, the Everett school system; but for the Gallup school system you have to have another situation?

Ms. SCHEIRBECK. That is correct.

Mr. MEEDS. Because of the tremendous impact of Indian school children on that system?

Ms. SCHEIRBECK. Yes. I would like to correct one thing in the report. Two members of the task force did not recommend that NCOIE be abolished, and that is—it appears in the report. The Task Force member, Mrs. Loraine Miasiazek, made recommendations, recommended that NCOIE be abolished. The entire Task Force did not recommend that.

That was only one member, Mrs. Miasiazek's recommendation. That should be reflected in the recommendations.

Mr. BORBRIDGE. As I gather, some of the thinking pertains to the following: Starting off with the proposition, it is practical because you can identify due to tribal reservation boundaries or anything similar to that. The element of tribal control becomes a much simpler one to apply, and in that instance, you want tribal control.

We have just discussed a variation of that with an infinite number of variables, which make it difficult to apply one simple structure to implement tribal control. And very likely there you are talking about what I would refer to as a spectrum of control possibilities. On the far end of the spectrum, we may be talking more about the right to participate due to one's status as the member of an Indian tribe through the tribal government. Another form of involvement may well occur through parent committees or similar entities.

Is that basically what we are looking at here?

Ms. SCHEIRBECK. Yes.

Mr. BORBRIDGE. The other thing I am concerned about is one who has spent 12 years in secondary education, the matter of accountability, of how one assesses whether the goals set out have been achieved. I think the other Commissioners have been alluding to this. It would appear to me we are talking about the input in a circumstance in which we not only have a secondary/elementary school situation, we have those goals which are usually associated with such institutions, where there are Indian children. We very likely have added elements of what we think the goals should include, because that school includes Indian children. I guess that is another thing we are saying here, then.

The usual goals and expectations that one would have of a school, a public school must necessarily be expanded because there are certain specific and unique needs that Indian people have that ought to be recognized in determining where the educational process ought to go.

I think the matter of accountability, measuring effectiveness—I want to state from my experience that this whole educational process is in a constant state of flux and change and reevaluation, and certainly one of the very pressing issues in all of education right now is accountability.

Where are we going? I rather resent the articles "Why Johnny Can't Read". It kind of picks on those named John.

But look at such articles. If one were to pick up the Post from the last two days, there is a query about why young people don't come out of school with a sufficient backlog learning of the kind that will help them in running a home, budgeting and purchasing a home, and so on. The point I am making here then, perhaps in a roundabout way, is this: the fact that Indian country is still in the process of determining what its specific educational goals are, how it can best achieve those, and how it can assess its effectiveness through a system of accountability itself, is in a state of flux.

I warrant what we find this year, and next year, would vary, and in so doing, it would do no more than to reflect what is occurring in the total system of education here in the United States. What I am saying is, the concerns are very legitimate. But we do not want to impose unreasonable, the expectations in assessing where we want to go in the education process. If we do, we are demanding of the Indian country what the United States is not able to achieve yet.

Ms. SCHEIRBECK. We were extremely concerned and we did say in our report no one is closely paying attention to the quality of education that Indian children are getting. That bothered us very much.

As I say, we have proposed a vehicle, that we had hoped would do something about this.

Mr. MEEDS. To summarize what I understand of your recommendations, what we have talked about so far, is that Indian control can and should be exercised in on-reservation nonpublic schools; that Indian input can be exercised on off-reservation public schools through advisory groups who have some influence on the expenditure of Federal funds which are utilized for supplementary and compensatory programs.

Is that an accurate statement?

Ms. SCHEIRBECK. I think as far as it goes that is an accurate statement.

Mr. MEEDS. How would you flush it out a little more to fit at least the conversation we have had so far?

Ms. SCHEIRBECK. I think the other thing we are saying in our vehicle is we would like the tribes and the communities, and we are defining community control as lower than the tribal council—we are talking about the communities—and we are saying in a number of those communities, the tribes, the communities and the States should have a way to negotiate with each other for public school systems, not just a BIA system. That is a part of the vehicle, that kind of element.

If the tribe and the community opts not to do that, they would stay with the BIA system. So we have added the new dimension of moving into the public schools if the tribes and States——

Mr. MEEDS. One question I have not covered so far. What are your final recommendations in this chapter with regard to boarding schools?

Ms. SCHEIRBECK. I would have to say the task force was divided on this question.

Mr. MEEDS. Have you read, Helen, this chapter 15?

Ms. SCHEIRBECK. I have not seen it.

Mr. MEEDS. Are there other people who can respond to this? What recommendations, if any, are made with regard to boarding schools?

Mr. ALEXANDER. The primary thrust in this chapter at the moment on boarding schools, comes from the finding on Task Force Five's part, that there is a substantial problem in the way that boarding schools, at least some boarding schools, are being utilized. The manner and form of the curriculum of boarding schools are not geared to the population the boarding school has; which means children in some boarding schools, are sent there because they may have educational problems, they may have behavior problems that may require special learning skills, they may require certain psychological techniques and so on. The curriculum of the existing boarding schools are not designed to deal with the particular demography of the students that many of them are in fact getting.

Boarding schools along the lines of the report, and to the extent they are to be retained, and some of them may need to be retained, some of them be geared to the social education schools to meet the specific problems that are being identified.

The task force goes on in its report to indicate where possible boarding schools be turned over to tribes and indicates in its survey of boarding schools, that in fact, some of the populations—for Navajo, Hopi, et cetera—might in fact, support a school system within the reservation, and there be a movement away from the boarding school to special schools to turn over to the tribes.

That is the direction we have adopted also.

Mr. MEEDS. You are suggesting that the curricula of off-reservation boarding schools is an educational curricula and many of the young people who are attending are attending not primarily because of educational benefits, but because they may have social problems?

Mr. ALEXANDER. Or special education problems.

Mr. MEEDS. Or special education problems. And what we need to do is redesign the role of the present off-reservation boarding school.

Mr. ALEXANDER. At least some of them. There is some substantial Indian opinion out in Indian country that at least some Indian boarding schools serve very useful roles, but that you almost have to define the practices of that particular school.

Mr. MEEDS. And the use of on-reservation schools, boarding or otherwise, be increased to prevent young people from having to be sent long distances to attend off-reservation schools. I am kind of glad to hear that. That kind of matches my own experience.

Mr. ALEXANDER. To cap that, when we were talking about juvenile delinquency for a brief moment before, in effect what has happened, given the hiatus of juvenile services, the boarding schools have been used in some cases as a dumping ground.

Mr. MEEDS. Are there further questions in the field of education?

Mr. BORBRIDGE. I am confident that this has been done, but I will ask anyway. I assume the effectiveness of the off-reservation boarding school situation has been assessed as to its impacts on the family, social structure, mental health, and such other measurements, and with respect to some of the other unfortunate consequences that occasionally occur; is that correct?

Mr. Alexander. There is a theme that runs through the removal of an Indian child from its home and its cultural and social impacts on the child and the family remaining at home.

Mr. Borbridge. Does the report comment as to whether these matters which seem so vital to the overall health of both the family and the individual child have been adequately met or somewhat inadequately, or very inadequately or how does the report gauge the response to this need?

Mr. Alexander. The report, or at least some of the task force members are strongly opposed to the way many of the existing boarding schools are operated. The component on boarding schools is a fairly straight, nonemotionally written chapter. There are other reports we are familiar with which carry out the theme you are talking about in boarding schools. It is a fairly straight kind of report. The whole report is nonemotional.

Mr. Whitecrow. After all of this discussion, am I correct in this understanding we are laying the groundwork here to allow Indian-controlled schools on reservation areas to be the guiding light, to be the educational programs on reservations? Now, I also understand in task force 5's report, they are recommending no further expansion of off-reservation schools? This would be schools such as Jones Academy, the Eufala, Seneca Indian School, Riverside School, such as this, in the State of Oklahoma. Also, am I correct in understanding a compensatory type educational program such as special impact, title IV, the Indian education program, the Indian Education Act, Johnson-O'Malley moneys, will be funneled through the tribes with those public educational facilities and negotiating with tribes for the funds to fulfill obligations to their students?

Mr. Alexander. On the three points as I understand you raised them, the general thrust is for Indian-controlled schools. We, as a staff, in this document have not defined that as to whether or not that means separate entities within the tribal system.

If you would go back to our discussion of tribal government and trust, our general thrust would be those are tribal decisions as to whether they set up a separate situation or whether that is under the tribe. The task force's view is there should not be an expansion of the negative components of the existing system; that you should not expand those boarding schools and those institutions that serve as dumping grounds. But there should be where those schools—if you want to take the Alaska situation for a moment. There may not be any other alternative. I don't know whether there is or not, other than boarding schools that would need to be expanded.

You have to take a strong look as to what, in fact, that school is doing in terms of curriculum vis-a-vis the student population. I think that is the major thrust and not expansion. It really comes out of the criticism of the schools that are not functioning appropriately.

Mr. Whitecrow. Are we leaving that aspect of planning within the educational department of this new recommended agency we are then looking at?

Mr. Alexander. That is what the task force has done. We, as a staff, have not taken a position as yet as to whether it should be a separate corporation, as the task force has recommended, or whether or not it should come within the purview of an independent agency.

Our view was to wait until the independent agency thing was flushed out.

Mr. WHITECROW. So we have more work to do?

Mr. ALEXANDER. We, as a staff, have not taken a position on what the physical location should be. We are recommending discussing what the policy should be. I am not sure I remember your third point.

Mr. WHITECROW. Indian education. Impact moneys.

Mr. ALEXANDER. I think our thrust is to the extent possible, and certainly in the tribal situation, that those pass through to the tribe and that is a tribal negotiation decision. Helen's task force sets up a mechanism of how the tribe would interact with the county system or the State system.

I am not sure what are the various different kinds of mechanisms that would be necessary for the urban and rural setting where there is not a tribal unit that needs several alternative type recommendations.

Mr. WHITECROW. I can see the possibility of a Colville member in Florida; a youngster in public school in Florida. Then how do we provide reimbursement to that school for that one tribal member attending that particular school district?

Mr. ALEXANDER. I don't think the staff has a unified position on this. You suggested earlier that the funds flow through the existing tribes. There are a number of problems with that approach.

I think Congressman Meeds' suggestion of a school system that may have several hundred different students who are members of different tribes, that is what I meant when I said perhaps we could come back and recommend a number of alternative systems to deal with the setting where the particular Indian child is away from its tribal residence.

Mr. WHITECROW. One of the inequities I see in the Johnson-O'Malley program, as an example, you must have a 10-percent enrollment that meets one-quarter blood requirement before a public school is eligible for those funds.

Mr. ALEXANDER. Oftentimes, we neglect in these discussions the other Federal programs that should be dealing with this. Johnson-O'Malley is a specific program and we all focus on it. But title I moneys that pour millions and millions of dollars into school systems that are supposed to deal with special needs, I don't think a school system should escape their responsibilities under either title VII moneys which are bilingual, bicultural moneys, or title I, ESEA moneys which are moneys that go for general target poverty populations. The Indian children in those areas being counted for those moneys. It is an easy out for a school system to say we don't have enough. But they are getting money which could also be utilized for special Indian programs, and that has to be focused in on.

I think that is what Helen is in part referring to when she says OCR at the Department of HEW is not as effective as it should be in its overview of how title VII moneys and title I moneys are used, not to mention dropout funds under title VIII. There is a significant Indian child dropout problem.

Mr. WHITECROW. Today we have Indian parent councils functioning under the Indian education program that are not responsive or are unable to be responsive to delivery of these special money programs to the students of those schools because in many instances, irate or radical type superintendents, functioning in those school systems, will not be responsive to parent councils.

Mr. ALEXANDER. That is back to what I said before. That whole advisory council notion in the education areas always a serious problem in implementing suggestions. Helen's bill suggests where an advisory council is not able to get significant inputt here should be a trigger mechanism that puts those programs through that advisory council to give them some clout. That is one alternative; there may be others.

Mr. WHITECROW. If this money could be funneled through the tribal government, that government would be responsive to that parent council.

Mr. BRUCE. I wonder if we cannot proceed with the recommendations that are made, and at our next meeting get back to some of these things specifically. I have a lot of questions in my mind; like, why the hell abolish the national Indian education systems because they don't like the people? How do you get around to making that thing work? I think there is a need for it; a lot of other things, too.

I would like to move along and suggest we either give the staff some guidelines for coming back to us or some specific things that gives us also an opportunity to deal with them and have some questions and get the clarifications.

Mr. MEEDS. Would you like to proceed now with the field of health and let us deal with your recommendations? If you would direct us to the page——

Dr. ZELL. I would ask the commissioners to turn to page 39 once again. I will repeat this for the record.

Again, at the time task force 6 and task force 11 submitted their reports, the Indian Health Care Improvement Act had not passed Congress, so there is no in-depth analysis of that act and its impact on health care services to Indian people or how it will affect the health status of the Indian people.

Mr. MEEDS. Does that mean you are going to eschew any recommendations at this time?

Mr. ALEXANDER. There was a meeting with a number of the top agency officials at the IHS this past week. It was their position, and they had read the task force six report that most of the problems and recommendations identified by task force six were cured by that act.

I am not convinced that is necessarily true. What we have asked is that the findings, which are identifications of problem areas, be adopted, if you will, or addressed by the Commission and that we come back after being able to do a detailed analysis of the potential of that act against the recommendations of the task force.

We think it would be precipitous to analyze the task force report when there has been major congressional action in this area which the task force just did not consider.

Mr. MEEDS. So you would, at our next meeting on January 6 and 7, be prepared to present recommendations for the Commission?

Mr. ALEXANDER. Exactly.

Mr. MEEDS. If there is no objection, we will pass over health until then.

Dr. ZELL. Mr. Meeds, what we plan to present are a few of the findings that a cursory analysis of the act are not covered by that act, problems that have not been addressed. We would like to bring those to your attention.

One of the major problems Indian people have identified——

Mr. MEEDS. What page are you on?

Dr. ZELL. I was going to give you a cursory analysis. One of the major problems Indian people as well as State health care officials and IHS officials have identified, is an area of confusion that exists, that is IHS. It has never been clearly delineated although IHS is the primary health provider for health services to Indian people.

The States act on this lack of definition by saying that IHS is responsible to provide health care and to be the primary provider of health care to Indian people, and in response to that they refuse service to Indian people.

Mr. MEEDS. You make that distinction between on-reservation and off-reservation?

Dr. ZELL. We found instances of State health agencies refusing treatment to reservation people or Indian people in urban settings where an Indian Health Service hospital or facility may be too far to go to in an emergency. The State would tend to say go another 50 miles down the road and get your treatment.

We think this is an area that Congress must take some action to clarify both for the Indian people as well as for all of the health care providers that are responsible for providing health care.

Mr. MEEDS. I think we did address that question in the Indian Health Care Improvement Act insofar as, at least, these people may be eligible for medicaid or medicare. Now when you have others who are not eligible for that, that does present a different problem.

Dr. ZELL. There would seem to remain some unclear area. In our meeting with IHS officials, they felt they did not want to become the primary health provider to Indian people, and in hearings we heard the opposite from Indian people.

Mr. ALEXANDER. This also gets in a peripheral sense back to the notion of the Federal Government's role in discrimination in the delivery of health care services where there is eligibility along with other citizens to Indian people.

The task force was rather weak in its supporting documentation on the fact there are patterns and practices of discrimination, but one can certainly point to other studies which document the pattern and practices of discrimination—and the litigation that has occurred. We may have to make specific recommendations for more effective remedial action in this area.

Dr. ZELL. Other findings of the task force, I might point to, although they did not feel it was their position to draw conclusions, were numerous findings relating to the management of Indian Health Service.

When we interviewed just last week with the Indian Health Service officials, they did not seem to feel there was any problem necessarily. Yet, when you look at the administration of services as well as the organizational set up, it seems clear there are management problems and those problems result in insufficient delivery of health care to Indian people.

Mr. MEEDS. I have a question which relates to all of the task force reports. They are all available now for Government printing, are they not?

Mr. ALEXANDER. They have all been sent over to GPO for printing. As I understand it, it will not be until January 12 when all, in fact; are off the presses and available. I might point out the vast majority of those reports went over the very first part of September. It has been a tedious process to get them through.

Mr. MEEDS. My reading of the Health Task Force report, at least to the summary of that prepared by the staff and our own staff, indicated positive information, conclusions, and other information on the whole question of drug abuse, alcoholism and mental health. My general question to you is: Do you have the resources, the time and the staff, to put together for the final chapter here, a comprehensive set of recommendations with regard to those subject matter areas?

Mr. ALEXANDER. You are looking at the staff that can answer that. My conclusions in reviewing this report were much the same as your staff arrived at, and that is the incidence of alcoholism and suicide, and those problems being indicators of mental health problems are so major and so serious and Indian people point to the problem of alcohol as being a major problem and of major concern to them. I think this Commission report would severely suffer if we did not try to cover those areas. We are going to put intense effort toward doing so.

Mr. MEEDS. Very well. Are there further questions or further comment on the health section?

Dr. ZELL. I would like to put a bottom line. Many measures have been taken under the Indian Health Care Improvement Act to draw in tribal input, to allow tribal health authorities to slowly take over health services, to allow tribes to determine whether they want to take over the delivery of health services to the people living on their reservations or surrounding their reservations.

We want to emphasize all of these programs or any findings and recommendations when they come up relating to alcohol and drug abuse, mental health programs. There is a strong feeling they should be tribally oriented and the Indian people are the ones who can best approach curing their problems.

This would also entail bringing medicine men more into the delivery of health care services. The task force report calls for an American Indian Medical School, over which there is some debate. But the incorporation of Indian people into the process, the health process, is of critical importance and that is one thing we have heard throughout all of the task forces.

Mr. MEEDS. If you read the records of the hearings and markup of the Indian Health Care Improvement Act, you will note that our effort to put increased emphasis on Indian medicine men and on establishment of an American Indian Medical School were somewhat thwarted by the legislative process.

Are there further questions or observations by menbers of the Commission or the staff with regard to chapter 9?

Mr. ALEXANDER. There are two areas in chapter 9. The first I mentioned to you before, which was the child placement issue. I do not, at this point, conceive of us going beyond what is contained in the draft we presented to you other than for a text discussion.

The thrust of those recommendations are to beef up tribal systems in placement to give the tribe the right of intervention in off-reservation settings. So at least there can be tribal input into the decision, as to what happens to that child, and to functionally expand the tribal setting for jurisdiction of the tribal court over the child placement issues.

I think the evidence we have collected is very clear. It is a very significant national problem, both in adoption and in foster care. There is something beyond the good faith of the States. There is evidence that some States—and I use the State of Washington as an example—social services have made significant efforts in the past 5 years to increase the placement of Indian children in Indian homes. However, they still have an 80 percent non-Indian placement of foster children and that is an improvement over a few years ago. That is the direction we are moving in.

Congressman MEEDS. May I make a suggestion with regard to your statement on page 5 on placement? As in other instances, we should recognize the wrongdoings of the white society against the Indians for lo—these many years. But we should also recognize that assimilation has not been the only reason for placement of Indian children in non-Indian foster homes. There are some very fine people out there who feel that they are not trying to assimilate anyone; but that they are trying to provide good homes for children. To say right off the bat that assimilation is the only reason for placement off the reservation is, I think, an overstatement of the case. You might indicate there are some good but misguided people who have had other reasons for this.

Mr. ALEXANDER. One of the things we do point out, and I agree, there have been throughout the whole social service mechanism of private and public, good faith efforts, that have had negative effects. There is a serious lack of education. A serious, serious lack of education of people operating in the social work, psychiatric, et cetera, and police work that generally get involved, end up removing Indian children as to Indian culture standards.

The assumptions are so often, sometimes from good people, completely negative. Some of the litigation cases are absolute horror stories. I know Commissioner Deer could give case examples, and I could give case examples all day in this area if I needed to.

Ms. DEER. Can you tell me if any of these materials, have expression of opinion by various professional associations? For example, the Association of American Indian Social Workers, the Association of American Indian Physicians, the Indian Lawyers' Association? I think all of these topics are of crucial importance to us as Indian people, but we do have these professional associations and I certainly would be interested in hearing what their assessment is of the various findings in these reports.

Mr. ALEXANDER. The only one I am familiar with in terms of this specific component, has to do with a number of professional social worker organizations that are running programs particularly in the bay area and other places. Most of that has been problem identification.

To go back to what has been decided yesterday in sending this report out in draft stage to people who are, in a sense, parties of interest, those are certainly people that this component of the report should be sent to for their comments.

Ms. DEER. I would hope this would be done.

Mr. TAYLOR. With respect to this child placement, these recommendations are founded around a child placement group in the State of Washington.

Mr. ALEXANDER. The recommendations have been submitted in the Congress proposal last August. They track a piece of child placement legislation that has been worked on for several years. The National Association of American Indians in New York has been a leading group in this field. We have worked closely with them.

Mr. MEEDS. Further comments or questions on chapter 9?

Mr. ALEXANDER. There is one other area—corrections. We are in the same state with the corrections as we are with juvenile deliquency. In Task Force 8, Task Force 11, it was mentioned other task forces in passing said, in effect, this is a serious problem. There are not in our files, sufficient materials to make specific recommendations that come from the task force. There are, however, a number of independent materials; we would like the opportunity to go back and look through whatever we can, to see what we can come up with, some proposed recommendations. The one thing that needs to be said, I think, at this point, is there is a significant feeling in Indian country that it is a substantial and major problem in the treatment of Indian prisoners in both the State and Federal penal institutions.

Mr. MEEDS. In the absence of any objection, the staff will be instructed to go beyond the task force reports to try to provide for the Commission recommendations in the field of corrections.

Mr. ALEXANDER. We will try.

Mr. MEEDS. Is there objection? Without objection, so ordered. Are there further comments or questions with regard to chapter 9?

Thank you very much for your report on chapter 9. I think we ought to discuss among ourselves where we are going here with regard to tomorrow and beyond that. We still have six chapters to cover. I would at least like to be excused at 4 o'clock today so I can get some work done in my office also.

We will meet tomorrow morning in room 1114, Dirksen Senate Office Building, at 10 o'clock.

The request today is for the request for the extension of time.

Mr. STEVENS. Mr. Chairman, yesterday Congressman Meeds made a motion, seconded by Commissioner Dial, and passed unanimously, to permit the procedure which Indian tribes and organizations, non-Indians, or anyone of interest could respond to a first draft. That first draft being due on January 6 and 7. We will put out a notice on that.

I brought this up, because if we are going to have these various people respond to the first draft, it would necessitate a possible extension. And, yesterday at the Commission meeting, the Commissioners discussed the possibility of an extension of time.

Mr. MEEDS. Enlighten us all on the present legislative dates.

Mr. STEVENS. The present schedule, under the legislation, reads generally, the final Commission report must be submitted to the President of the Senate and the Speaker of the House within 6 months after submission of the final task force reports. February 18, 1977 would be the latest submission date possible.

If as we discussed yesterday, a 60 or 90 day extension were granted, the final report would be submitted April 18 or May 18. On the basis of Congressman Meeds' motion, we worked out a schedule of what it would take to accommodate the review of the first draft.

Then yesterday, the Commission approved a meeting date of January 6–7, 1977, at which time the first draft of the text and the specific conclusions and recommendations would be dealt with. Then under the motion, our staff would make revisions and the printed final draft would be mailed out by at least January 24. We would need at least 2 weeks for revision, printing time, and time required for mailing. People who are present here the Commission made a point of the fact they did not particularly want to have a hearing. They felt since people had task force reports to deal with that if they had the final draft, it would be far more significant to comment on the first draft. In their minds, that would be better than a hearing.

We were also directed to categorize the comments as they come back. Then we would append them at the end of the final Commission report.

With a February 23, final date for acceptance of draft comments, the Commission analysis of comments and appropriate revisions of the final draft and Commission approval for the report to Congress would take place approximately April 15.

Then the final Commission approval would be May 28, 1977—that is on the basis of the 90-day extension. The life of the Commission would not be affected, in that it still would end June 30, 1977.

Mr. MEEDS. Would it require additional funding?

Mr. STEVENS. It might possibly. We could use fewer consultants and make some savings, but it probably would not be enough if we extend the Commission that far. We will need additional funding—not be a large amount.

Mr. MEEDS. Could you give us some idea of what amount of additional funding would be required?

Mr. STEVENS. Approximately $26,000.

Mr. MEEDS. What will be necessary then will be legislation in the very early days of the Congress extending not the lifetime, but some of the deadlines within the lifetime of the Commission?

Mr. STEVENS. Yes, sir.

Mr. MEEDS. I can only speak for myself, but in view of this additional process, which I think is a good one, of circulating the report and getting comments on it from the field, almost all of which time would be required to get the thing out; to get the comments back; to give them meaningful consideration, and then prepare a final report.

I would personally be prepared to support this in the House and I am sure Senator Abourezk is prepared to support it in the Senate. You must realize, however, we are only 2 of 535 and that might not happen. In the event it does not, we should have an alternative plan which we could follow in the event we are not successful in passing this legislation.

Do any of the Commissioners have comment on the extension?

Would someone care to put the new time schedule with the recommendation that legislation be sought to fulfill it, in the form of a motion? Do I hear a motion?

Mr. WHITECROW. Mr. Chairman, I so move.

Mr. Bruce. Seconded, Mr. Chairman.

Mr. Meeds. The formal motion is that the deadlines within the life of the Commission, be extended to provide for a Commission meeting on a first draft markup for January 6 and 7, 1977, staff revisions by January 24, which will provide a first draft which will be mailed to concerned persons, who will have 30 days to comment, brings us to February 23. That after that, and until April 15, there will be Commission analysis of the comments and revisions such as are necessary or voted, and a final deadline for the submitting of the final report to May 18, 1977.

The Chair will put the question. All in favor of the motion of the Commissioner from Oklahoma, signify by saying "Aye." Opposed, no. The ayes have it. The motion is carried.

Appropriate legislation will be sought to carry into effect the new schedule.

Are there further shopkeeping matters?

Mr. Dial. As it stands now, we only have one date on the schedule for meeting, January 6–7?

Mr. Meeds: By its nature, however, there will be an additional one sometime after April 15—excuse me, sometime after February 23.

Mr. Dial. You cannot establish those dates now? We will set those dates on January 6–7?

Mr. Meeds. Right. If possible, yes. I doubt if we will have our legislation passed by then.

Mr. Dial. But it won't happen before then?

Mr. Meeds. No.

The next order of business will be the question of resources. Ernie Stevens, chapter 8. Ernie, would you give us a quick overview of the subject matter covered? The task reports included in chapter 8 and the major recommendations of the report.

Mr. Stevens. The subjects covered are economic development, natural resources, specifically lands, land acquisition and consolidation, a utilization of tribal lands, the special problems of allottees, land leasing, agriculture, and grazing, forest management, fisheries, minerals, and nonrenewable resources including minerals, coal, oil, enterprises, including private enterprises, joint ventures, tribal enterprises, resource inventories, environmental impacts, water rights including trust responsibilities, hunting, fishing, trapping and gathering rights. Taxation.

The staff recommends the section on resources and the entire subject matter with its accompanying topics assigned to task force 7 be reevaluated, reorganized and presented again for consideration at the Commission meeting in January. The Task Force Report did not collectively put its investigation into a proper historical economic context.

Mr. Meeds. What task force does that cover?

Mr. Stevens. Task force 7 predominantly. Although there was input from the jurisdiction task force and task force 1 also task force 9, and task force on tribal government. I felt the findings should have been put into a better historical, if not cultural, context. The task force did not substantiate its findings through the information gleaned from its extensive site visits. In other words, it did not tabulate its report nor did it use the major effort of the report, which was to make site visits on 32 reservations. Yet in the text of the final report, it did not use that information as a frame of reference, nor did it take the opportunity to prove it. It did not deal with either manpower or housing which were specifically assigned to task force 7.

The task force did not successfully complete its assignment, because it omitted recommendations. The recommendations have been conspicuously missing. They seem to have been unceremoniously dropped or withdrawn, since there appears to be a pattern of studiously avoiding the recommendation after arriving at a conclusion.

It started out by stating issues and coming to conclusions and then it just stopped there. I felt there were some recommendations somewhere, but they were not turned over to us.

Task force did not utilize the significant Indian opinion already published. Also, I would have to say in deference to the task force, that the files were not really organized as well as they could have been. The gaps are in manpower, housing, community development, water rights, forestry, fisheries, minerals, land resources, infrastructure education, and examination of income and its distribution.

Mr. MEEDS. What else is there?

Mr. STEVENS. A couple of things. The report is too inconsistent to provide a basis for consideration. There was a short, rather well written section at the end of the report put together by Peter McDonald. But it does not relate to the rest of the report. It is an appendix. On that basis, I have asked the Task Force specialist why they did not bottom line their questionnaire.

I have asked one of the attorneys to see if she will finish that section. It isn't going to take that much.

Second, I have retained an economist who is going to help us interpret data. She and Ray Goetting, Chuck Peone and I can come up with a good report by January. We have gleaned some findings from their text, and from that we have itemized 10 things. That is page 53.

The first is: Congress should address additional appropriations, including provisions for loans and equity capital, through both existing and new legislation for the purpose of acquiring and consolidating formerly owned Indian lands within the exterior bounds of the reservation in order to provide for the economic stabilization and future self-development potential of Indian tribes.

The second is: Congress should make provision for the removal of legal obstacles to the full utilization of Indian lands, and provide for the alleviation of the special problems of allottees; that is, purchases of fee and allotted lands, consolidation of multiple and fractionated heirships, improvement of tribe's authorities over the Secretary of the Interior's discretion, removal of laws which obstruct exchanges of lands and/or sales of interest to allottees, possible reasonable restriction on inheritance, et cetera.

Three: Land, agriculture, grazing; leasing and forest management. We have no recommendations at this time.

Four: Nonrenewable resources, minerals, coal, oil, et cetera. We have no recommendations at this time.

Five: Enterprises, private, tribal, joint venture. No recommendations at this time.

Six: The Congress should provide for tribal governments to receive adequate funds and technical assistance to more readily prepare themselves to develop tribal natural resource inventories, cope with environmental problems, water use and disputes. Tribal control of these technical capabilities is essential to allow for long-range plans to develop a stable economy.

Seven: Water rights. No recommendations at this time. There was no water rights report. There was one appended to the jurisdiction task force, which for some reason, they did not think was completely adequate.

Eight: Hunting, fishing, trapping and gathering rights, which includes treaty rights, State interests, trust relationships, role of Federal courts. No recommendations at this time.

Nine: Taxation: Federal, State and tribal. No recommendations at this time.

All of these were viewed from the context of the income they would generate for economic development.

Ten: The Commission direct the staff to pursue further study and analysis of existing questionnaires, special reports, and other available data. An examination of such materials and reports will include: (a) an evaluation of the 32 tribal economic questionnaires secured by task force seven; (b) an evaluation of special tribal reports on economics and natural resources, that is, Northwest Affiliated, Crow, Standing Rock, et cetera.

I might add, there is a special fisheries and forestry report coming in from Guy McMinds and Frank Archambeau and Walley Heath, which is in final draft.

(c) An evaluation of existing and extensive files on economic development and natural resources which has not been utilized as yet. There is a rather large file and bibliography on this particular subject. Most of those subjects are very well documented and at this time, well organized.

(d) Pending studies in contracting, budget, planning, fisheries, and forestry will be received no later than December 1, 1976.

(e) An evaluation of existing economic and land data is presently being prepared by staff.

Congressman Meeds. What you are telling us is, you don't feel at this time any posture to make your major recommendations because of the inadequacy of the task force report?

Mr. Stevens. Yes, sir.

Mr. Whitecrow. Ernie, can you give us any kind of feeling as to why this task force did not complete its work? Those people we selected for that particular activity were in our opinion, at that time, most qualified to do a job. Why did they not do their job?

Mr. Stevens. I have no reason to change my judgment of them. They are three of the more able people in that field. Peter McDonald is chairman of the Navajo Tribe. He did put something together. Also, I think the recommendations are missing, but nobody will admit it. You can just read the report and tell that something is missing. For people who were talking in the beginning of the report about being scientific and all, the text of the report makes liberal use of "if one may assume" and so on. There is something missing there. I do not know why it is missing.

Mr. Whitecrow. Mr. Chairman, this past summer I took it upon myself to do a little preliminary work in this specific field. I came across an opportunity that might be a feasible project and I turned this over to a staff and I don't feel enough work was done on this insofar as follow-up. We had a tremendous amount of work and this is certainly no slam toward our staff, but I think it was an area task force 7 should have approached. I cannot see any evidence that they did. Insofar as the treaty relationships of our tribes are concerned, I personally made contact with the World Bank to make some determinations as to whether or not the tribes individually could become members of the World Bank and become eligible for long-range, low-interest, developmental loans, such as to undeveloped nations.

Initially, the vice president of the bank I talked with, said he did not think there would be any possibility at all. Then, after I got through discussing the treaty relationships with him, he indicated there might be a possibility and they would have their attorneys look into it, and their attorneys did. He returned a call to me notifying me the attorneys felt as far as they knew at that particular time, the tribes would be eligible for membership in the World Bank, providing we could get the Congress to concur.

Now, I think this is worthy of follow-up. If we are thinking of alleviating the drain on the taxpayer insofar as fulfillment of treaty obligations, I think this would be an avenue, whereby Indian tribes through their governments could take advantage of these types of loans and totally and fully develop their reservation areas.

Mr. MEEDS. Would he also suggest we deal with Indian tribes and nations through our foreign aid program?

Mr. WHITECROW. That was a suggestion at one time.

Mr. MEEDS. Is the gentleman suggesting that?

Mr. WHITECROW. Negative. I am not suggesting that. I am suggesting there may be a possibility the World Bank could take a portion of the load of the Congress, insofar as assisting tribes and developing their individual areas. I would like to get some feelings of the other Commissioners on this before I proceed with making a motion to this effect.

Mr. BRUCE. My own comment is, it sounds like a good idea. I think we need more information. Have you gone into this at all, Ernie?

Mr. STEVENS. Andy Anderson is doing something with that right now. But we would have to go into it further.

Mr. WHITECROW. What I am suggesting here, I think our staff should do some further research in this area, and if it is possible, inasmuch as our task force seven is quite incomplete and our staff is going to be doing some additional work to try to complete that report, I think that is an area our staff could spend some time on and give us some recommendations.

Mr. STEVENS. The person I have retained has worked in the area of the World Bank in relation to Third World countries. It is part of her discipline.

Ms. DEER. It seems we might look into this; what the repercussions might be; it is an interesting concept that should be explored. I would like to ask if there has been any thought now on the part of staff members to include some cases that illustrate, particularly in this area of resources, the violation of trust, the conflict of interest, the neglect and so on. It seems to me, in this whole area of resources it is extremely vital to the survival of our Indian tribes and that the way the trust has been administered and so on has created a lot of problems over the years and to me, if you could have a couple of good cases as illustrations, we could illustrate a number of points in this way.

Are there certain examples of outstanding cases that you or Pete or any of the other lawyers would have in mind at this point?

Mr. TAYLOR. I know of a couple of studies in the area of taxation, particularly the Crow Reservation and their mineral leasing up there. The White Mountain Apache, there was a GAO study of trying to develop an economic development format and I am sure that would have information that would supply pretty good case studies.

Mr. STEVENS. We have a number of cases documented. One of the things we have to do is to blend them into the sections dealing with sovereignty, trust, tribal government and so on. But I also feel we have to illustrate the possibilities where Indians would control their own technical assistance capabilities. I think we have some very good case studies where Indians have been successful if they were merely given the opportunity to develop some of their own things.

I think of the Lummi, I think of Quinault, and other operations where the tribe fundamentally did the whole program, at least initiated it and pushed it along. We would include those case studies too, to show how it can work.

Mr. TAYLOR. I think the Quechan, the tomato farms——

Mr. STEVENS. The Quechan, which the Commissioners visited, not only has controlled environment, but also demonstrate their ability to consolidate lands and bid against non-Indian agricultural enterprises. They have a farming operation run completely by the tribe.

Mr. TAYLOR. Another area that might warrant study here, it overlaps with jurisdiction, would be Colville in hunting and fishing and selling licenses for that purpose, and the revenues that such a thing generates.

Ms. DEER. I think it is unfortunate for whatever reason the work of the task force has been inadequate. It seems to me this resource area represents an opportunity to integrate many other areas, such as sovereignty, jurisdiction, trust and so on, so I am looking forward to your completed work on this.

Mr. WHITECROW. There is an area I think we need to look at, and Ernie, I would appreciate your covering this area for our next meeting, and that is approaching those trust moneys the Bureau presently has. It is my understanding they presently have $452 million-plus, and their trust responsibilities and the banking regulations to date prohibit centralizing that money, so it could be beneficial for utilization within Indian country.

What good is Wisconsin Indian money doing Wisconsin Indians when it is being applied to the State of Texas? I think there is a real possibility of coming up with a recommendation from this Commission to the Congress demanding the Federal Deposit Insurance Corporation maximum limit, insofar as coverage and depositories with banking. We may be getting into an area here where the banking interests in the nation will be after us. But if we could centralize this money, I see a possibility of creating one of the largest banks in the Nation.

Mr. TAYLOR. We do have some recommendation regarding revision of laws dealing with investment and deposit of Indian trust moneys. I am sure we could expand on that. I know we did not get to the FDIC concept, but I am sure we could come in with recommendations on that.

Mr. BORBRIDGE. As I recall, in the process of the development of this report by the task force, a very specific charge given by the Commission was that housing should receive a very definite emphasis.

If I recall correctly, in its preliminary report to the Commission, the task force was specifically directed again, that housing was to have a great importance as a part of that report. As I further recall, the executive director made this report to the Commission and reported on the outcome of the conversations to correct the situation as well. As I quickly pursue the report, it appears that housing is largely absent from the report. This goes beyond being just an inadequate treatment, it falls short of responding at all to the direction of the Commission. I think this is unfortunate.

There is no question that the entire spectrum of housing concerns might be better met and programs better administered. This is a very important element of the report.

Also, in looking at the treatment given to or not given to the whole matter of forestry and timber products development, these are important because they go right to the heart of the ability of the various tribes to administer on their own behalf and to exercise, what I think, is the basic and fundamental proposition of economic self-determination.

I am pleased that the approach you have outlined will be made with respect to this area. I consider it extremely important. In the end, I think the manner in which the Federal Government relates to and recognizes its obligation in this area will have a great deal to do with the success of on-going and future tribal enterprises. So I want to express my concern as well, that so many of those very basic important matters were not given the detailed attention we anticipated they would receive.

I can only conclude the staff that is going to work to fill in these gaps are going to have their work cut out for them. It appears to me that there is a considerable amount of work to do. In all fairness, do you feel you have the resources with which to address yourself to what I think is the most fundamentally important aspect of this study?

Mr. Stevens. We have, if we use existing materials. We do not have if we try to develop new materials.

Mr. Dial. So you plan to say on water, I use Veeder as an example, use some of his existing materials on water, some of his studies on water. It seems to me that is the only way you could complete your work. You don't have time to do it now. You don't have time to hire someone to go out and do it.

Mr. Stevens. The only supplementary type of work we will do will be an economic analysis. We have retained an economist to look at existing economic data. I want to mention, for instance, there is an excellent study on income distribution on the Yankton Reservation, and I think there are one or two others pending. There is a wealth of bibliographic material, many pages on file, and in pretty good order.

Mr. Whitecrow. I will say one final thing, and then I will relinquish the floor. I think Public Law 95–580 really spells out what our responsibilities are in trying to come up with a congressional movement to make tribes self-sufficient. And, unless we provide resource opportunities, however they may be, whether they be through the World Bank or through utilizing our own Indian moneys with protections on those moneys, or whether we utilize additional Federal funds and make recommendations for additional Federal funds to utilize these, I think we are really just spitting into the ocean in this effort, unless we provide those sources and resources that the tribes can develop industrial enterprises, business enterprises, et cetera; to create those jobs there on those reservations and develop those natural resources to the extent necessary for self-sufficiency.

Mr. BRUCE. I know I have harped on this every time we have had a meeting, and griped, the rest of the Commissioners did not set up a task force on housing. I feel very strongly about it.

I want to ask the question why we did not use the housing report that was submitted?

Mr. STEVENS. I don't know. We asked them if they would use it, and they said no. I don't know. I asked them and they just did not want to use it.

There was something we were just not privy to. But the housing report and the thing on EDA, both their conclusions were not to come to recommendations. There was some kind of agreement on the part of the consultants and the staff I was not aware of. I just do not understand it.

Mr. BRUCE. Are you going to be able to use this report for something on housing?

Mr. STEVENS. Yes, sir.

Mr. BRUCE. We had a meeting in the office the other day on housing. But I have read that carefully. There are some excellent ideas that we ought to be recommending.

Mr. BORBRIDGE. You feel there is sufficient material you will not only be able to deal with regarding the question of clarification of ownership rights, planning for and the utilization of the resource base, but that such resource base will be considered not only on the reservation status, but on ownership patterns which are other than reservation?

Mr. STEVENS. Yes, sir. A good part of that is economic analysis in projecting income. Many times the consolidation of heirships and the acquiring of lands within the exterior boundaries are looked upon as trust matters or one thing and another. It is an economic potential. I think people have to spell out the benefits of the acquisition of land, and I think that can be done with projections of figures. Also, I believe one of the things the Dawes Act fails to take into account is the financial loss suffered by Indians. We always look at how it broke down the reservations and its effect on the tribes. But we never specifically lay out what the financial harm was.

Mr. MEEDS. Are there further questions or comments on chapter 8? If not, I think you have made a very wise decision to further study this matter and come forward with recomendations later; with independent analysis of information already collected and/or further information and analysis which may be done.

Is there further business to come before the Commission? If not, the Chair would like to mention you should take your materials with you tonight; we will be over in room 1114 in the Dirksen Building at 10 o'clock tomorrow morning.

If there is no further business, the Commission is adjourned until 10 o'clock tomorrow morning in the Dirksen Building.

[Whereupon, at 4:17 p.m., the Commission was adjourned, to reconvene the following day, Tuesday, November 23, 1976, at 10 a.m.]

MEETINGS OF THE AMERICAN INDIAN POLICY REVIEW COMMISSION

NOVEMBER 23, 1976

Washington, D.C.

Present: Senator James Abourezk, chairman, Congressman Lloyd Meeds, vice chairman, Senator Lee Metcalf, Senator Mark Hatfield, Congressman Steiger, Congressman Sidney Yates, Commissioner John Borbridge, Commissioner Louis R. Bruce, Commissioner Jake Whitecrow, Commissioner Ada Deer, Commissioner Adolph Dial.

Staff: Ernie Stevens, staff director, Ms. Ernie Ducheneaux, administrative assistant, Paul Alexander, Peter Taylor, Ray Goetting, Donald Wharton, Charles Wilkinson, Patricia Zell.

Mr. MEEDS [presiding]. The American Indian Policy Review Commission will be in session for the further consideration of the reports of the staff in regard to the task force reports. The agenda for today is chapter 10, "Off-Reservation Indians;" chapter 14, "Special Problems, Oklahoma;" and chapter 15, "General."

We will now proceed with chapter 10. Paul, would you give us a general overview of the task force reports covered by chapter 10 and the basic recommendations which are made by the staff.

Mr. ALEXANDER. Chapter 10, which is termed "Off-Reservation Indians," essentially comes from Task Force 8 which is urban and rural nonreservation Indians. The task force report is essentially a problem identification report. The task force did its work, as I understand it, through a series of field hearings and questionnaires to urban Indian groups. In terms of the recommendations that the task force made, the staff at this time is not willing to recommend that their specific recommendations be adopted. There is significant controversy amongst some of the urban groups concerning some of the recommended mechanisms for delivery of services in certain areas. The staff would like more time to work out the general details.

The general thrust of the chapter is that there are substantial needs in distinct social service areas to nonreservation Indians. One of the lacks in the report, in my view, is that the report does not get sufficiently to the notion of—it does not trace and specifically identify what the problem areas are: In general, the types of poverty funds that run through State and private organizations, including those going through urban areas, in terms of what the economics are there.

The report makes some general recommendations for $90 million in budget, $50 million to IHS and $40 million in general. We cannot determine from the report what those numbers are based on, what the setoff would be by taking existing funds from the various programs and putting them into that.

Some of the issues that have to be worked out involve the mechanisms for the deliveries. What is the role of the urban Indian center and what is the role of the individual tribes in relation to the urban Indian center? Should some programs pass through the tribes? Should others go directly to the urban Indian centers? Should the urban Indian centers control certain funding or should they have substantial input to the decisionmaking within the county or the State systems where the programs are currently being run?

There is not a consensus in Indian country that we have been able to identify on each of these issues, so our recommendation to you is to acknowledge that there is a substantial needs problem among urban and rural Indians, and to go back to the drawing boards and try to work out several delivery system mechanics for your consideration in January. I would mention a number of urban Indian groups have contacted us in the last several weeks asking for input into the task force report in terms of alternative recommendations.

We said we would be perfectly willing to talk to them. A caveat with that is, we do understand that task force did, by questionnaire and invitation, solicit the input of many urban Indian centers and Indian groups generally. They got mixed results in terms of responsiveness.

Mr. BRUCE. I want to ask some questions about the fact that they did send out questionnaires to all of the centers, urban centers, which would be 78 or 79 and also as many individual urban Indians as possible. Isn't it true we got very, very little response?

Mr. ALEXANDER. I am going to answer in two parts. As I understand it, the response was minimal. The other thing which has permeated our discussion is that much of the input of Indian country in this task force area—and other task force areas—has been on problem identification. Then the task forces went from problem identification to potential remedies. It was very infrequent that remedies themselves were the subject of Indian input with the exception of Public Law 280 and some other specifics; but generally speaking, input was in problem identification and not necessarily in remedies.

People told us things like—we have a problem and you have to understand the problem and the permutations of that problem. There has not always been a great deal of thinking about what is the best remedy for all situations.

Many of the kinds of remedies are very specific to the problem that exists. In Minneapolis, with a particular program, for example, what the application of that program is in a Chicago setting or a setting in Oakland, Calif., or Los Angeles, may vary. It is a substantial problem for us to define the kind of mechanics that are necessary to reach all of those different situations.

But you are absolutely right. The response was minimal.

Mr. BRUCE. I want to also say I attended most of the urban hearings and so I am in a position, to the extent I attended those hearings, of knowing that no one was kept away. In one instance I remember we ran until 10 o'clock at night on the hearings so the people who came a distance could testify at those hearings.

I have had the pleasure of attending eight key centers across the country on my own, and spent a couple of days including last week up in Boston. I have a different feeling whether they were typical of all of the other centers. I am not sure. But I did find there was a lack of clear understanding of what their responsibilities are and where they fit into the communities.

I would point out maybe, Wichita Center, which is very closely tied into the city operations to the extent where they do fund that center—and I think it is $2 million a year—that comes out of the budget of the city, that they do secure money, as well as help, from city employees.

There is a very close tie between what they are doing there and the activities in the city. I happened to be present when they had an art showing and opening and so forth and to see the tremendous crowd that came out that night and since then for a new center funded by the city. The city officials were very proud to say to me this is our center, and we are proud. It is our Indian center. It is that kind of thing. Plus, setting up committees and that sort of thing.

But I think we need to postpone any action on this. There are some recommendations, like whether funds should be channeled through the centers for the services rendered to urban Indians. That is not clear. There are some that feel that way. Also, the recommendation that there be an Assistant Commissioner in the Bureau to be responsible for the funding of these centers.

Let me say this, too. There are some centers that work very closely with the community, the help, and where the services are available to the Indians, and I am not saying this in all cases, they reach in to fund those services to urban Indians. So I got a vast variety of reaction from visiting these centers. I want to go into that a little bit more.

The question I want to ask is: How do you come to $40 million for general services? It spells out health, employment, housing, and so forth. That is not broken down anywhere in the report.

Mr. ALEXANDER. In my view, the task force report does not substantiate its economic recommendations. It does not analyze existing funding and it does not define what that $40 million would be spent for. As far as I am concerned, that is a figure pulled out of the air.

If the proper analysis was done perhaps that would be the figure. But there is absolutely no way of knowing.

Mr. YATES. Is that an annual figure?

Mr. ALEXANDER. Annual; yes. It seems to be a ball park figure. They do not seem to substantiate it.

Mr. BRUCE. It is true within the last week or so I have had a lot of response from urban people including the centers. The eight centers I visited. We have suggested they fill out their reports and do it; a little late, but if they wake up before and respond to our questionnaire, now that they want to blow things up, but go ahead. Open up and send their reports in so we can review them. I don't think we have enough background now except in the report itself to make recommendations specifically.

Mr. WHITECROW. One thing I want to make very clear, and that is the fact that I am not antiurban metropolitan Indian. I come from a nonreservation State at the present time and we do have a tremendous number of urban and metropolitan Indians in the State of Oklahoma; we even have skyscrapers in the State of Oklahoma.

So we are almost up to date. I think from the standpoint of Indians in metropolitan and urban atmospheres, whereby we have real fine Indian facilities, Indian centers, that have been developed as a result of Indian interests with the assistance of local governments and State governments, and in many cases, the Federal Government, providing funds to operate these facilities. I am not antiestablishment at all.

But I feel the moneys are being provided and it has been pretty well determined from our previous discussions here that the money provided is being provided as a result of the special relationship the Federal Government has with tribes. It is my understanding the Federal Government does not have that special relationship with the individual Indian other than that individual Indian holding full citizenship rights as a citizen of the United States.

Now, we talked at some length yesterday about how we were bringing education to Indians, and our education task force recommended the Indians control those schools in reservation areas. I at some length commented we needed to provide the moneys through the tribes for all of the supplementary-type educational programs. Johnson-O'Malley funds are those special types of funds funneled through the tribes. Wherever an Indian goes, he is an Indian, and I certainly realize people back in some reservation areas, when one of their citizens leaves and goes to the metropolitan area, that they claim they are no longer Indian. An individual does not lose his Indian identity when he leaves home. He still retains that identity. He still has a special relationship with the Federal Government but it is through his tribe.

This is, as I understand this whole concept, and therefore, those Federal funds that come down to any kind of an operation to benefit Indians, should be funneled through the tribe putting that responsibility upon the tribe, thereby making tribal government responsive to its members.

Then, when we have Indian centers developing around the area, they would negotiate with the tribe to determine the amount of money that particular tribe could fund through it to the Federal Government. True, this creates an administrative workload. It would allow the Federal Government to determine how many dollars it must provide to meet the responsibilities it has to that special relationship.

Currently, we have got so many different people advocating for so many different kinds of moneys, I am sure Mr. Yates' committee has a terrible time as to determining whether or not they have duplicated funding. So from the standpoint of what I am getting at here, I am in concurrence; I don't think we are in a position to make a decision on this. But I would like to ask the staff to make a study of it and determine some means of alternate funding through the tribes.

Mr. YATES. I want to comment on what Jake said, Mr. Chairman. Commissioner Whitecrow said it would provide difficulties if the funds were channeled through the tribes in part for Indians who live in urban communities. In my District in Chicago, for example, we have representatives, I am told, of as many as 200 tribes. Of course, they are scattered throughout the country. The tribes themselves come from all parts of the country.

If your concept is correct and the funding for the health of the Indians who live in my district must come through 200 tribes in different parts of the country, it seems to me it would be almost impossible for the Indians to receive their health care. I don't know whether this is an unusual circumstance, whether my district in Chicago is unique in having representatives of so many tribes, but I suspect this would be true in every metropolitan community in the country.

If this be true, if every metropolitan community in the country is made up of as many kinds of Indians as mine is, it seems to me you may be undertaking an almost impossible task in providing care for the Indians who live in those communities if you require the Federal Government give the money in the first instance to the tribes and then let the health care of the Indians who live in the metropolitan areas or communities depend upon the money from the tribes.

Let me ask a question. What happens if the Federal Government does not provide enough money for both the tribes and the Indians of those tribes who live in metropolitan communities? Under your concept isn't it a problem that the Indians on the reservation would receive first those funds and the remainder of the funds will go to those who go in the cities?

Mr. WHITECROW. I think that is probably true. In the field of health, in contract health care alone, many of the urban clinics that have been established have to have some form of third-party reimbursement. They have to have some form of funding. In some instances the administration of the clinic is funded by the Indian Health Service.

If we are looking at creating a separate agency for Indians, then all of these various moneys that are provided be funneled down through this same agency, then in the budget process, at tribal level, they take into account all of these many needs, the total dollar needs, to fulfill those responsibilities of social services, responsibilities of transportation, the responsibilities of highway development, et cetera.

They develop this total need. Let's take as our example funds for health care, a line item in the Indian Health Service budget. We are constantly running out of contract care money in the Indian Health Service.

I think it would be impossible, it would be a terrible uphill fight I am sure, to get the particular line item budget funded with an open end. But contract health care money as an individual Indian representative of a tribe or a member of a tribe wherever he may go could, with the delivery of health care, receive an identification card as a private member, as a tribal member, and this tribal member would be informed of what his benefits are. He could take this card like Senator Bellmon was talking about, it would be of a relationship the tribe could develop through its own insurance program or some existing insurance program, and pay that care through the tribe for its tribal member. This individual then would go to the Indian urban health clinic and receive health care and the clinic itself would receive reimbursement for those services and allow that clinic then to maintain its operations.

Mr. YATES. If you will yield further on this, it is not only a question of health care. I think also there are two schools in my district; for example, I have a high school and a grammar school, where the population is almost exclusively Indian. I assume your concept would require the funds for their education would go to the tribe and then go back to the board of education in the city of Chicago to educate those Indian children. What to do, too, about the section of the Department of Labor which has a special group in my area to provide equal employment opportunities for Indian people? Would you have the funds go back to the tribe again and then have it channeled to the

Department of Labor in order to take care of the unemployment needs of the Indian people?

You have a series of needs which include not only health, and education and labor, but I am sure as this concept is developed you are going to find they require other needs as they go along. I just wonder whether you are not putting yourself into a labyrinth. I think as you have explained it, it is a very simple and logical concept. I wonder whether or not it is capable of execution under the circumstances in which we find ourselves today of Indians who live in the metropolitan communities and who are in need almost immediately of their particular needs; to require them to receive their funding from the tribes I think will really deprive them of their opportunity—I don't know what the answer is. I know today we have great difficulties in providing funds for health services in the Indian communities. There are certain of my colleagues who say why should Indian people in the cities receive any better care than any other Americans? Why shouldn't the Indian people go to the clinics where other Americans go? Why should Indians have preferred treatment?

I have argued so far that the Indian people are a special group under their relationship with the Government of the United States and they are entitled to a kind of special care.

But I think to set up your kind of special establishment, you are going to deprive them of the funding they are going to receive. It is a very complex subject. I don't envy our staff here trying to get it worked out within the next couple of weeks.

Commissioner WHITECROW. Certainly, I realize it is a very complex area to work out. There are still a lot of details that need to be worked out. But if we are really in effect looking at self-sufficiency of the tribe—that is the question—and Public Law 93–580, if the Government is looking at self-sufficiency of the individual Indian or are they looking at self-sufficiency of the tribe? We must take a look at this side to make that tribe self-sufficient—individuals, I don't think we will ever make every individual Indian totally self-sufficient.

This is pretty well established by the atmosphere of the United States today in total. But I think it is a realistic picture to make a tribe self-sufficient.

I am not advocating an overnight turnover insofar as this is concerned. I think it should be the attitude of Indians and their relationship to tribes has not developed overnight, tribal government has been relegated to a point of insignificance for a hundred years now, and it has taken a hundred years for people to realize they did not have a tribal government or if they did, they had nothing more than a civic organization.

If we are looking at a sovereign issue and if we are looking at the court of jurisdiction, we should also be looking at the funneling of these funds and the relationship of the Cougress back to those tribes rather than to the individual Indians.

I would like you to give that some thought, if you will, as to how it could be done without depriving services and perhaps piecemeal this in over a period of years.

Mr. ALEXANDER. We have been giving it a lot of thought. One of the ideas we have been kicking around is to look at specific services. One of the notions that was suggested was for scholarships, particularly in those type of programs, that they at least run initially through the tribe. I think we would kind of break it down service-by-service conceptually first, and see what the various administrative procedures would be.

Your views are well known to the staff and the views that you represent have been expressed to us many times. It is not an easy question. That is all I can say right now.

Mr. MEEDS. I would like to go to a kind of threshold question, if I may, and that is, what is the legal basis for responsibility to urban Indians who are not members of a tribe to which some special treaty responsibility runs?

Mr. ALEXANDER. I take it beyond special treaty responsibility. To start off with, it conceptually gets us back to our conversation of yesterday involving the course of dealings. The fact of existence of many urban Indians comes from BIA relocation programs, the failure of the Federal Government to enhance and maintain the economies of reservations, and the movement of Indians from tribal areas. It comes from a course of dealings. A course of dealings creates a certain level of dependency.

Mr. MEEDS. The policy of assimilation?

Mr. ALEXANDER. The policy of assimilation is one component. The other component that I think has to be addressed comes from the failure of the Federal Government in the primary trust responsibility which has to do with the resources and the economic development of the tribe. The fact that tribal economies are and have been for so long essentially dormant, forces people to seek employment opportunities in other areas; the assimilation policies which we are most familiar with in the 1950's moved many people to Chicago which was one of the relocation centers.

Your statement, Congressman Yates, about the diversity of Indian population in Chicago is true for the Los Angeles area, is true for Oakland, it is true for many parts of the country; other urban areas closer to reservation areas like the Great Lakes regions seem to have a more consistent population. But there is great diversity. Two hundred tribes——

Mr. MEEDS. Perhaps we should provide for a system of identification and qualification of tribes, groups or bands which have a special treaty relationship with the United States, and provide for a system under which those tribes, groups or bands could identify their own members. All Indians who would not fall within this category would be treated as a special social problem resulting from mistakes in governmental policy in much as we do the problems of poverty. Isn't that a better legal foundation than establishing a basis for special treatment of a broad array of Americans who through some governmental policy—a governmental policy which we perceived later to be incorrect—have been displaced, caused to change their course of action and a number of other things.

I think it is a rather dangerous precedent to say that because of governmental action which is later perceived to be incorrect, there may be some special responsibility on society to single these people out.

I think it would be better to say this is a social problem. In that way we could work through urban centers and not have to go back to tribal distribution which I agree with Mr. Yates simply won't work in urban areas where 10, 20, or 30 tribes might have some areas of responsibility.

Mr. Alexander. In a sense what you have described is the current system. The programs that in fact go into the urban areas—most of the programs, I will qualify that—are basically poverty programs run by CETA (Comprehensive Employment and Training Act) moneys, we are talking mostly about HEW programs, we are talking about food stamps, a wide range of programs that this country has made available to people at poverty levels as opposed to, with some exceptions, special programs flowing out of the trust obligation.

I would still maintain however, that the trust obligation that the United States has, vis-a-vis the political entities of the tribes, in a course of dealings which defines and changes in a sense the secondary components of that trust obligation which are the social service components should flow especially to those Chicago members residing there because of governmental action or inaction off reservation.

Mr. Meeds. I hope we are not discussing a distinction without difference here, but it seems to me there is no legal basis for special treatment of urban Indians who are not members of tribes which have a special relationship with the United States because of treaties.

It may be the result of the course of dealings with the Government, that you can say the same thing about blacks in housing, then you can say the same thing about other members of our society because of special courses of dealings and special governmental policies which set them apart as social problems.

But I find it difficult to substantiate this relationship on a legal basis.

Mr. Wharton. I think in responding briefly to that, that there is a specific difference between the kinds of problems you identify with non-Indian special interest groups and the Indian people we are talking about in this context. Unlike the other groups you identify, they have not had the resources available to them in terms of their governments, and their lands, and their other systems of resources appropriated away from them and put into a position where they can no longer provide those things for themselves.

Mr. Meeds. As individuals we may speak in terms of tribes having had lands taken away from them, but I don't think you can speak of an individual who moves to the city voluntarily or as a matter of governmental policy as in any different situation than a black who has been forced to live in the central city because of housing discrimination which prevents him from moving out. They are both in the same situation. They are both there because of official governmental action.

Mr. Wharton. As a practical matter, they both have the same problem and they are both in the same position. As a legal proposition, that black does not have a separate entitlement. That is, that entitlement arising out of their aboriginal claim to the use and occupancy of the land irrespective of treaty or other agreement specifically between them and the U.S. Government. This is the principle probably from the very first, I believe *Johnson* v. *McIntosh.*

I don't have the date, it is one of the early Supreme Court decisions, *Johnson* v. *McIntosh*, which lays down the justification used by the European nations to take the land and specifically those justifications based first of all on discovery which did not give them the land. What it gave them was the exclusive right to negotiate for the land vis-a-vis other European sovereignties.

The second justification being they have—God told them to come and save the heathens, literally, and the Pope passed that along to them so they had that obligation. And in view of that obligation they could do virtually anything that was necessary and they usually did.

Given those dual justifications, they came and reorganized governments, appropriated land, for whatever view you may take of that, and then when they did that as they moved across the country, it doesn't serve any purpose to retell all of the horror stories, but the point is they destroyed the governments and systems available to those people to survive in this country and that is not the same situation that any other identifiable group faces within the boundaries of this country. That is a separate, distinct, legal entitlement. That is what the whole course of dealings is about.

They have created a dependency for people in their own land.

Mr. MEEDS. Is this in fact the principle of *Johnson* v. *McIntosh*?

Mr. WHARTON. No. *Johnson* v. *McIntosh* is the land. The dependency principle comes out of *Kagama*. *Kagama* is a treaty case dealing specifically with treaty, but the principle of dependency is enunciated in that case.

Mr. BORBRIDGE. If I may rephrase some of this, what you seem to be saying at this point is that in looking at the entire spectrum, if you will, of the various tribes, some are denominated federally recognized tribes and others are not so denominated, while others fall in between. We are not sure in which category the tribes may fall. Let's look first at those tribes that are recognized by the Federal Government through treaties or other specific instruments and let's take a look at the specific tribal members who, for various reasons, have migrated into the cities.

We have just been examining the administrative difficulties involved in having the tribe administer the program and having the funds flow through the tribal government which could conceivably be far removed from various members of its tribes who might be located in various cities.

It seems to me this becomes something of a mechanical point. We must clearly establish that the sovereignty of that tribe is important and a recognition by the Federal Government in the delivery of the services to its members wherever located must also take into recognition that sovereignty and its importance. It may well be that the mechanics for various reasons may not necessarily result in the specific delivery of those services, say, in a specific city. But there may still be a recognition of that tribal membership in such a way that even where the tribe itself does not specifically deliver the services, a recognition by the Federal Government of that tribal member or members, and their relationship to the tribe, would be a part of that delivery system.

Isn't this part of what we are saying at this point? In other words, I don't want this proposition to flounder solely on the basis of mechanical difficulty. I think if we establish that the principle is important, for example, ten tribal members in city A are recognized as members of that tribe, the delivery of services will be related to that tribe in some fashion. Is this a distinct possibility? Another important proposition is to take a look at the entire spectrum of the circumstances of our people. Let's remove the question from the setting in which it is now placed in an urban setting. We tend to become somewhat too involved in the mechanics, and I subscribe to the notion the principles are more important than the mechanics at this point.

I think that what we are talking about now is not just Indians in an urban setting; we are talking about Indians in the United States. It seems to me the question that is involved here is simple even if the response we make to it is not so simple, and that is taking the entire spectrum of the Indian nation; what is the specific relationship of the government to the entire Indian nation?

Thus we can start with the tribes which are more identifiable and with whom there is a treaty or other very specifically identifiable relationship, at least one that the Federal Government has gone on record as recognizing.

Over the entire spectrum, I am not sure what to do except to say perhaps that they are tribes that are not recognized or tribes not subject to specific treaties or perhaps tribes subject to ambiguity caused by the Federal Government itself—maybe that is a better encompassing term. You have just stated a proposition that you feel pretty well encompasses this entire spectrum. I guess this is the key question I am looking for here. How do you perceive this relationship? Does it extend to the entire spectrum of native Americans in the United States?

You partially addressed yourself to it. Remove it from an urban setting. I think urban delivery of services is a matter of mechanics. How self-encompassing can our approach be?

Mr. ALEXANDER. There is in fact I think one group that is left out of the two things you say, or some individuals, not necessarily a group. There are people who because of intermarriage patterns between tribes may have the blood of three, four, or five tribes, and not have sufficient identification with any tribe to be a member, although they may be 90 percent Indian blood. That is an additional wrench in the machinery we are talking about.

Mr. WHARTON. I think there is another thing that needs to be recognized. Particularly with respect to individual Indians in urban settings, that the reason they are in the urban settings as we have pointed out is because they have not been able to support themselves in tribal settings.

One of the other things that needs to be noticed is a significant number of people in urban settings, return to their tribal and reservation bases when they can. They are not oftentimes in those urban settings from now on. It is a quite transient-type population that moves back to the tribal setting when the opportunity is available to them.

I think what you are pointing out is very important. You have to recognize as a primary principle sovereignty and the base of the government, the ability of that government to deliver those services to those people.

Obviously, there is administrative difficulty about delivering services in urban settings and the mechanics of that need to be worked out in reasonable fashion. I agree with you that would not be inconsistent with the sovereignty.

Mr. BORBRIDGE. We recognize then at this point we feel it is recommended the mechanics of delivery take into account the sovereignty of the tribe, recognizing the tribal individual wherever that individual may be. We further recognize that with the diversity of tribal membership and the small numbers that may be located in various areas, it may not be possible for that tribe to directly administer those services, but it is certainly possible for the Federal Government to recognize the membership of those tribal members in the tribe. It is important to recognize that even if the participation of the tribe may not be necessarily through a direct contract to the 5 or 10 members located there. That is a matter of mechanics.

I am not asking for the impossible with fragmented contracts to 5 tribal members or 10 members. This is not the basic proposition. The proposition I am recognizing is that the service must be quality and the sovereignty of the tribe which are both important to this issue.

Mr. MEEDS. Are there further comments on this chapter 10? If not, thank you very much, gentlemen. We will now proceed to the considerations of chapter 13, Problem Areas, Alaska.

Tell us what task force reports the information contained here is taken from and give us your general recommendations.

Mr. ALEXANDER. This is a special report. This chapter is based on a special report undertaken by three task forces: Task force 4, jurisdiction; task force 7, resource development; task force 2, tribal government. It is limited in scope, this chapter. It in no way seeks to lay out all of the issues and concerns that relate to Alaska.

Most of the chapter focuses on the Alaska Native Claims Settlement Act, and some of the problems, short term/potentially long term, that are perceived under the Claims Act. In addition, the chapter addresses some of the mechanics of existing programs, particularly 638 and who is the appropriate tribal entity to administer 638 programs.

It is my understanding the AFN is submitting a report to the Commission that will encompass some additional areas of concern about Alaska. We have not yet received that. In addition, some of the specific problems are not included such as health care, how educational services operate in Alaska. After the health task force report was received in toto the Alaskan member of that task force submitted an additional chapter on Alaska which we have not had time to integrate on health problems in Alaska. The text of the task force report itself had a small chapter on Alaska which was totally insufficient. So we did not draw any recommendations from it.

Basically our conception is Alaska must be treated separately because of its unique history in terms of the United States and the fact of the Alaska Native Claims Settlement Act.

What we have defined is short- and long-term problem areas and some solutions for them. The short-term issues center around Alaska Native claims for 40 million acres and a cash settlement of approximately $1 billion. The mechanics of the settlement include a system of regional corporations and village corporations.

Congress in the Alaska Claims Act, as you are well aware, undertook an experiment. Something it had not done before.

It has tried a totally new approach. There are time constraints in the act about the taxation of land, the alienation of stock certificates; the period of generally 20 years.

What we are faced with today in Alaska as we understand it from the Native Corporations, the Alaska Native Foundation, and the AFN, is the significant problem in the operations of the Department of the Interior in making land transfers.

At the time of the report, which was in July, only 500,000 acres of land had been transferred out of the 40 million acres in interim conveyance form to corporations. As I understand it, since that time several million additional acres have been transferred.

We are in a situation where because of the easement negotiations, because of the enormous process undertaken by the Native Corporations for selection, the economic potential of the act is being undercut. The corporations spend substantial resources in fighting the Department of the Interior. The $1 billion that was set out, some of which flows to the corporations, and some of which go through the corporations to individual native stockholders, is undercut by the inability to develop resources because of the hiatus in the transfer of land.

It is undercut by the cost of opposing the Department of the Interior. It is undercut by inflation, if nothing else.

What we have suggested, one, is that the Department of the Interior allocate sufficient resources—this is on page 2—to its Bureau of Land Management, so it can get the land conveyance process underway. If the Department does not have the existing resources that it should make a request to Congress. It is our view that an executive department cannot hide behind the notion that it is overworked or overtaxed unless it comes to Congress and presents Congress with that problem saying it is overworked; in this Native Claims Settle Act it needs resources to be able to make conveyances.

The suggestion that the easement provision be repealed comes from the joint Federal/State commission that was established under the act and it is the recommendation of the State director that has been echoed by many of the corporations; an alternative proposal is for the Department of the Interior grant interim conveyance. For those of you who don't know about interim conveyances, because most of the lands in Alaska have not been surveyed, it is impossible until this survey occurs to issue fee patent titles. So there is an interim form of title or interim conveyance which with the addition of an exact survey to establish the metes and bounds of the specific parcels of land then become the fee title.

The additional suggestions which have been made to Interior by a number of Native corporations in interim conveyance be issued to the corporations and the easement provisions be fought out later, even in the courts where they seem to be heading. If they end up in court, what you are going to do is eat up millions of dollars in attorney's fees, aside from all of the expert testimony that is necessary.

I might point out on easements, and this again is the position taken by the State director, that there are existing legal processes for determining easements that are normally used on all lands, court procedures, reimbursement procedures.

The easement provision of the Settlement Act is very different than what would happen if a power company wanted a power utility line across a reservation in the lower 48. These are economic weapons the tribes in the lower 48 use to get reduced electrical rates or get contributions to education, colleges, or what-have-you. Considering the significant amount of work that has gone into the Native land conveyance, we also recommend the economics of the act be supplemented by provision of attorney's fees for the developing litigation and hearings.

We also recommended, and I understand there was an oversight hearing by Senate Interior, oversight of the Department of Interior, to the Congress because of the 20-year exemption from taxation—what we are talking about is taxation on lands not generating income. Once a resource of a corporation, be it investment into a business or the utilization of the resources, be they timber, be they minerals, or what-have-you, produces a profit, they are taxable under the act.

Mr. MEEDS. What you are talking about is subsistence lands.

Mr. ALEXANDER. I am talking about subsistence lands. I will use for an example, the Arctic Village Corp. Arctic Village selected its lands specifically not to develop but to try to retain the culture they have had for thousands of years. There is currently no land tax in Alaska. That situation may not remain that way forever.

If Village corporations and regional corporations hold lands and wish not to develop because of subsistence of lands and those lands are taxed, there are no economic resources to pay those taxes. The corporations such as Arctic Village would be forced into a situation where they would either have to sell off land or develop that land.

So what we are recommending at a minimum is that the 20-year exemption from taxation run from the time that fee title is transferred; optimally it should run indefinitely. There is an additional problem and we have not gotten into it in terms of the recommendation because there is not a consensus among the corporations in the Native villages. That is the question of stock certificates.

Each Native eligible owns 100 shares of stock in the regional corporation and in his or her village corporation. Those stock certificates are inalienable for 20 years, that is, they cannot be lost, they cannot be sold, with certain exceptions such as divorce proceedings. Once that 20-year exemption runs out, those certificates can be lost for a variety of means. Even though they might not produce significant income from the corporations, they become the major financial asset held by many Natives. They could be lost in debt proceedings, they could be lost in inheritance taxes. One of the potential horror stories laid out to us by Emil Notti of the Alaska Native Foundation in the Artic Village situation again, theoretically the corporation decides not to develop a particular parcel of iron ore or oil on the basis such type of development would destroy the ecology and the subsistence economy and the lifestyle of the area.

Any outside corporation that wished to develop that parcel given general corporarion patterns, would need only to buy up maybe 30 percent of the stock, 40 percent of the stock, for a one-time cash outlay and control that Native corporation.

What we are talking about is will Native people be able to control the corporations, which were set up to hold their assets, their heritage, under existing and potential economic situations and education situations.

One of the things that was really mind opening, mind expanding, was the incredible effort made at the village level to try to operate under the act. We were in the village of Unalakleet where under the Claims Settlement Act there is an IRA governmental council, there is a municipal corporation, there is a village profitmaking corporation.

They have a nonprofit program operation corporation. They have a nonprofit fishing co-op. There are about 150 people and they have 6 entities which they have to run. Not only do they not know the language of corporations, not only do they not know—they have tried extremely hard in extremely good faith to learn and operate within a system. It is an overwhelming and incredible job, to acquire in 5 years the total corporate vocabulary, the legal concepts to select your land. It is being done, but it is being done with great difficulty at the villege level.

Mr. MEEDS. Maybe we ought to remove the residents of Unalakleet and bring them down to run the Federal Government.

Mr. ALEXANDER. What they have done is really incredible. They have revenue-sharing funds through the municipal corporation and they use them to coordinate. But the problems are significant. For example, understanding of what a stock certificate means; although there is major educational effort going on. There is still very much awareness in Alaska of losing control or danger of losing corporations down the road.

What we have recommended on the long term issues—this is an experiment people are trying and people are trying sincerely in Alaska on the village level and the corporate level to work under the system that was set out—is that another look at the act be taken in about 1980 and issues, hard issues, be examined to see how the experiment is going, to see whether some of the concepts that were felt to be appropriate in the late sixties may in fact work against some of the long-term Native interests. Focus on such issues as trust status land, alienation of stock certificates—John Borbridge has spoken to this and he has spoken several times about it, and other Native leaders in Alaska have spoken about it—the first 5 years under the Settlement Act have taken 200 percent of everybody's time to deal with the mechanics of land transfer.

It is just recently people are focusing on issues surrounding stock certificates, alienation of such certificates, how these corporations can interact—some of them are redundant now—how social services are performed in Alaska and so on.

What we are recommending is a hard look-see at basic issues on a long-term basis.

Mr. MEEDS. Could I ask a threshold question again with regards to this matter. What is the legal basis for a special relationship between Alaska Natives and the U.S. Government?

Mr. ALEXANDER. Our answer is about to become redundant. There is in the course of dealings with people who had aboriginal rights to all of Alaska, as political and cultural entities, a responsibility under the trust obligation, the trust relationship of the United States, to the Native peoples of Alaska.

We could go back through Kagama and the discussion we had yesterday. Essentially, it is the same.

Mr. MEEDS. Is there not a provision in the Alaska Native Claims Settlement Act which in effect says that this act shall not abrogate nor detract from the special relationship that exists? I have some recollection of that.

Mr. ALEXANDER. There is specific language which says the trust obligation essentially continues. That is an issue that we have in fact not gotten into and which is really a serious issue. The Alaska Native Claims Settlement Act, which in fact terminates hunting and fishing rights, and which creates certain land bases, certain corporations and is a very complex piece of legislation. One fact is the trust obligation and how is that defined.

This chapter does not get into that at all.

Mr. BORBRIDGE. I would like to comment on that, Mr. Chairman, if I may. It is a very fundamental issue because the rights, particularly to the land, of the Alaska Natives, was in fact preserved historically for action by the Congress in a series of acts, all of which were alluded to in the hearings attendant to the passage of the Settlement Act itself.

What clearly resulted from this effort was not only the specifics applying to rights to the land and the effect of the clarification of those aboriginal rights, but other Native rights as well were preserved for disposition by future acts of Congress. Largely, then, such rights, or perhaps more specifically the special relationship between the Alaska Natives and the Federal Government was not clearly defined prior to the passage of the Claims Settlement Act of 1971.

What has been restated in the Claims Settlement Act is that whatever the nature of that special relationship, it has not been eroded or adversely impacted by passage of the Settlement Act. This is one of the very fundamental claims that Alaska Natives have reiterated in this area.

I think it is one that very largely fails to be brought forward. It permeates the entire relationship. But it does not emerge specifically because of the lack of a specific action needed to clarify its status.

We point to this as something that is fundamental. The Alaska Natives continue to examine whether the Federal bureaucracy is adversely reacting, either through regulation or whatever, in assuming the passage of the act has somehow caused the Native to achieve a circumstance of affluence. The consequence is that Federal agencies think that they need not be as sympathetic to the Alaska Natives.

I think this sort of subtle erosion is perhaps more difficult to fight successfully than that which confronts the basis of the trust relationship more directly.

Mr. ALEXANDER. Just to follow up on Commissioner Meed's statement, the United States obligation to Alaska Natives was recognized in *Berrigan* v. *the United States*, which was a 1905 Supreme Court case, to protect and as an obligation of the course of dealings to protect its Indian wards.

Commissioner Borbridge makes a very pertinent point on the impact of the Settlement Claims Act on the psychology of the State and private citizens; there is a notion abroad in Alaska that there are thousands of newly affluent Natives. There is no evidence to support that notion.

What I was referring to in terms of the trust obligation was beyond the social services area. These are issues we would have to address and we have not yet addressed. What is the Secretary's obligation to protect stock certificates' ownership and property rights of the Alaska Native villages? What is the Secretary's obligation to enhance village governments? What is the Secretary's obligation to protect corporation rights?

The trust obligation runs to land, among other things. But it clearly runs to land. What is the Secretary's obligation? Again we get to the classic conflict-of-interest situation. The Secretary of the Interior and his agents are on the other side of the bargaining table. They are the people who define what the easement standards are. They are the people who are not acting efficiently and effectively in the land transfer.

Yet on the one hand they have a trust obligation. On the other hand they are the managers of the land that is being turned over. And, throughout the BLM there permeates an atmosphere of land management, not land transfer.

Mr. MEEDS. I think that the single greatest impediment to the transfer of lands to the Native villages and corporations is the easement question. The suggestion that transfer take place subject to whatever resolution of that problem is made is an excellent suggestion.

Easements are being used as a club right now to prevent the transfer of land.

Mr. ALEXANDER. One of the things I would like to point out generally, which is hard to conceive without a map in front of you or being in a fishing village, is if you are talking about stream easements, those things make a lot of sense in the lower 48, but when you draw a 30-foot easement around the village of Unalakleet there is nothing left. That is it. And it is considered in all of the villages, a weapon, a club being held over the heads of the village corporations.

Mr. BORBRIDGE. Just briefly on that point, Mr. Chairman, I think this can be added to innumerable examples we have, wherein the Secretary of the Interior in providing a justification for an action states that he represents the greater good for the public and that this action is necessary. Thus, he holds up his right hand in promising to provide justice while with the left hand he manages to try to assure the Alaska Natives he has done the best he could for them. I think this is all too typical of the type of circumstance we encounter.

I must suggest, and the vice chairman has had considerable experience in the Alaska Native Claims Settlement Act and was one of the chief architects of the act, that it provides such a wonderful opportunity. It really is landmark legislation. It has a lot of creative originality about it. Unfortunately, we Natives do have to work through the Department of the Interior which, unfortunately, is not noted for its creative attitude.

Alaska Natives generally shudder whenever the Secretary stands up—whatever his name—to announce that as the protector of the greater public good he has acted. We immediately conjecture as to what we are about to lose. And that is the truth about most of our negotiations.

Mr. BRUCE. Why wasn't Alaska included in Public Law 638? We are making the recommendation, or the staff has, that they be included. And in 638 for self-determination grants.

Mr. Alexander. They were included. The problem is defining what is the tribal government for Alaska? Which one of the competing corporate, municipal, tribal entities should be the contracting agent? Who should receive the 104 funds?

What we have done is make a recommendation of a priority system of where that money should go. Alaska is included but it is vague and ambiguous. It is left to the area director's determination.

In Commissioner Borbridge's region, the Tlinget-Haida Council has a long history as a tribal government and it maintains it should be the recipient of funds. In other areas of Alaska, the individual Native villages maintain they should be the recipients of the 638 funds.

What we have done is propose what we believe to be a rational priority system for determining who should get the funds.

Mr. Meeds. I have a question. Perhaps Commissioner Borbridge can answer it.

In instances where Native villages have the right to make decisions which affect residents of those villages who are non-Native and who have not been designated as Natives, do those non-Natives have any representation or input in that decisionmaking process?

Mr. Alexander. It will almost have to go village by village. Most of the villages that have a non-Native population of any significance tend to be municipal corporations. As municipal corporations all people in the village have input. The governing powers of the ICA Councils, although not completely out of existence, have seen some atrophy over a period of time.

Mr. Borbridge. The Congress, with your participation, foresaw this problem and provided with specific reference to the land, that no less than 1,280 acreas should be transferred to the municipality or in the event a municipal form of government under State charter had not been formed, this land would be held in trust until the municipality was formed. Thus, with respect to such land areas as the villages now encompasse, plus the additional area, all of that land collectively would fall within the jurisdiction of the municipality with their form of government. It would be chartered under Alaska State law.

Under those circumstances the Natives and non-Natives who are members of the municipality could have equal rights.

Mr. Meeds. These are governmental decisions?

Mr. Borbridge. These are governmental decisions.

Mr. Meeds. The same jurisdictional type of questions we have been addressing earlier in the sessions on taxation, zoning, and other governmental powers.

Mr. Borbridge. Yes. Thus, with respect to the remaining lands, that is, the corporation-owned lands, these would fall, of course, within the jurisdiction of the corporations.

Mr. Meeds. There are no non-Natives in the corporations. Only Natives can hold stock at this time in the corporations?

Mr. Borbridge. Yes; except to such extent a non-Native might inherit stock where there were perhaps no Native individual that was designated in the will, then this would be nonvoting stock.

Mr. Meeds. That stock will become alienable in 1991, at which time conceivably, non-Native would also have input through stock ownership of the corporations.

Mr. Borbridge. Assuming non-Native ownership that might occur, I might concur with what the staff alluded to as a concern. The Congress further saw in consideration of the act that it was important the Alaska Natives have an opportunity to acquire the experience and sophistication to be derived from operating in a corporate environment which as a means of implementation of a Claims Settlement Act was unprecedented in the history of our country.

As a consequence, an unfortunate consequence because of the delay in the transfer of land, the period during which the Natives administered both the funds and actually gained the experience of administering their affairs pertaining to their land has been delayed. The actual period in which they will have opportunity to gain experience and sophistication instead of being 20 years is going to be less than 15 and perhaps even closer to 10 years.

Mr. Whitecrow. Commissioner Borbridge, I want to apoligize for not knowing enough about Alaska to ask really sensible questions. But I would like to give you a word of caution. For the allotted schedule of lands in Oklahoma is one I would certainly recommend that you look at. That particular procedure allowed tribes in Oklahoma to lose not just the majority but an overwhelming majority of their landholdings by issuing fee patents to individual tribal members.

Many of these tribal members have lost lands and as a result the total depletion of Indian lands in the State of Oklahoma has been almost complete. Insofar as your stock certificates now, I understand at the end of 20 years your stock certificates will be eligible for purchase by non-Indians or anyone who will be available to purchase those.

Are you talking about the actual possibility of loss of your lands up there through this process?

Mr. Borbridge. Yes. In response to the question, the answer is yes. I think for one who apoligizes for a lack of knowledge, you have put your finger on one of the overriding and fundamental issues that is of great concern not only to the Alaska Natives but to the friends of the Alaska Natives who worked with us for passage of the Claims Settlement Act.

Roughly, this is what could occur in 1991. There could be a loss of control of the corporations, assuming there is an acquisition of controlling stock by nonnatives. This, of course, would mean control of the assets. When we talk about assets, we are talking about not only financial assets but we are also talking about land and land resources. Thus, 1991 is a very landmark date and I think is a specific time at which to view how successful the entire settlement act has been.

We are really dealing with two broad areas and you have correctly identified this. One is how the act operates now. But assuming that in the intervening 20 years we have become highly successful and I have assurances we are going to achieve a good measure of success, then, of course, a takeover of some kind in 1991 could still very well occur.

Thus, the more successful we are and the better the act operates, the more attractive we will be to other corporations that are well financed and may be desirous of acquiring whatever assets we may have.

Mr. Whitecrow. I might give you a word of caution and ask you to consider this aspect of it. We have one tribe in the State of Oklahoma, the Osage Tribe, who developed headrights on their mineral holdings and as a result now, through the process of many, many years we have a great deal of non-Indians who are headright owners in that tribe and in effect are controlling the assets and mineral rights of that particular tribe.

As a result of this, we also have fullblood Indians now who are of Osage descent and are not headright owners and have no voice in their own tribal government. I would like to caution you. If this is a possibility, I would certainly look toward this and ask the staff the individual Indian loss of land should be taken into consideration.

Mr. Alexander. The voluntary loss of land is not the only potential problem. The involuntary loss—Commissioner Borbridge is 1,000 percent correct. The pass through to the individual native may not be sufficient in debt proceedings, in inheritance taxes, in getting on State welfare. What is the status of that stock certificate to the State? If the individual native's economic condition is not highly substantially raised—you have to take into account the economics of Alaska, whatever is a reasonable income here, double it for Alaska. As we take cabs to go around Washington, you can spend $1,000 in an afternoon going to two or three villages by plane.

The threat of involuntary loss of stock certificates in divorce proceedings, inheritance proceedings, through State welfare proceedings, is significant and substantial. The Native Corporations in Alaska and the AFN and others are doing major education programs as to the voluntary component of selling stock certificates. Hopefully, that will be successful. But that other component is extremely dangerous.

Mr. Whitecrow. I might say this. From the standpoint of many of the tribes we are working with today, we are looking at the possibility of allowing those tribes to rebuild a land base. If you can take from past experience we have had in Oklahoma, we have lost a great deal of our land. I would certainly caution you to take every precaution from the Indian standpoint to not allow yourselves to get into that particular category.

We must now begin rebuilding a land base of some sort if we hope to achieve any kind of self-sufficiency as a tribe.

Mr. Meeds. That reminds me of the ammunition given to the Indians who met Columbus and they were told by those who foresaw things, that perhaps their immigration policies were a little too lax.

Are there further comments or questions?

Mr. Dial. Now that we are leaving Alaska, I hope someone will turn on the heat; the air-conditioning is on.

Mr. Borbridge. Certainly, I want to acknowledge the oversight hearings conducted by the House Subcommittee on Indian Affairs. As a consequence of the oversight hearing, fundamentally important legislation was passed. This resulted specifically in passage of the omnibus bill which was signed into law January 2, 1976, and from the viewpoint of some of the corporations, including Sealaska, this was landmark legislation and I want to acknowledge the time and attention that went into its enactment.

At a later point, the Senate Interior and Insular Affairs Committee also conducted oversight hearings. Notwithstanding all of this valuable and vital help, the legislation is an evolving mechanism which from time to time discloses new problems that emerge; without these efforts we would have been troubled by other more fundamental issues which may have troubled us far more.

Another vital matter. One of the provisions included as an amendment to the Settlement Act was the provision referred to as the Buckley amendment. The Buckley amendment recognized if there were any delay in the payment of the $500 million due to be derived primarily from revenues, coming from and following as a result of the construction of the pipelines, there would be an erosion in the value of those moneys. Congress recognized then, that a delay in the construction of the pipeline would result in a delay in payments to the Alaska Natives, thus reducing the worth of that money. It provided that there should be payments forthcoming with $5 million to be paid the latter half of calendar year 1975, and payment of an additional $5 million the first half of calendar 1976.

Unfortunately, although Congress made it quite clear that it recognized as justifiable the concern the Alaska Natives advanced and in fact Congress did pass this amendment, the natives were subsequently advised that although the Department of the Interior sought funding for this provision, unilaterally, and without any notification to the Alaska Natives, and, it appears, without any notification to the Congress, the Office of Management and Budget urged striking out any recommendation for funding this provision.

To me, this illustrates in a most graphic form the arrogance and the insensitivity of the Office of Management and Budget which not only unilaterally acted contrary to what Congress declared it wished to have done, but it did so without any notification whatsoever to the Alaska Natives whose rights were affected.

I might add that a number of our friends in the Congress have sought to correct this inequity, but unsuccessfully. The Congress recognized the problems in good faith they acted on the matter, but not only the will of the Natives but their will as well was frustrated.

With respect to another item, the delivery of services in Alaska is obviously impacted by the higher cost of living, that is, the higher cost of the delivery of such services.

Has staff actually put together any figures that might be derived from either so-called marketbasket studies or Bureau of Labor Statistics? If these have not been forthcoming, I would urge that such figures be included since it gives a sense of specificity to anyone who views that as a specific problem.

Other than that, I would quickly point to the effect of inflation on the value of the Settlement Act since it was determined that the federally appropriated funds of $462.5 million would be paid over an 11-year period of time; the $500 million to be derived from a 2-percent override of royalty at a less certain schedule although the State of Alaska projects complete payment of that sum in about 6 years. I see no specific answer here. The Alaska Natives will apparently share the damage from inflation that has struck the Nation. But nevertheless, these are the unfortunate consequence of the inflation on our Settlement Act funds.

Other than that I will quickly point to the fact that under section 17(d)(2) of the Settlement Act of 1971, approximately 30 million-plus acres of land will be selected and classified. There will be an impact on the Alaska Natives, thus requiring us to recognize that massive changes are taking place in Alaska. Oil exploration and development is again going to pose some tremendous pressure on the Alaska Natives.

Further, we need to educate Native Corporation stockholders. While the corporations involved have made efforts to educate their stockholders, it would appear there are other agencies that should undertake to assist the Alaska Natives to fulfill this particular responsibility that I regard as a very fundamental one.

Mr. MEEDS. If there are no further questions or comments, we stand in recess until 1:30.

[Whereupon, at 12:15 p.m., the meeting was recessed for lunch, to reconvene the same day at 1:30 p.m.]

AFTERNOON SESSION

Mr. MEEDS. The Commission will be in session for further consideration on the chapters prepared by the staff.

The next order of business is "Chapter 14, Special Problem Areas—Oklahoma." Mr. Wharton is the lead staff member. Please proceed first to give us an overview of the work of the task forces, and then the recommendations made by the staff.

Mr. WHARTON. If the Commissioners will take notice, there is, I hope, a table of contents at the beginning of chapter 14 in each of your books with respect to the task forces. Most of our task forces held hearings in Oklahoma.

However, with the exception of task force 1, none of the task forces gave it extensive coverage. We do not at the present time have for consideration of the Commissioners any recommendation on this subject because it has not been sufficiently developed to support recommendations at this time.

The reason I asked you to look at the table of contents is because it will give you very quickly a view that the Oklahoma Indians face many of the same problems faced by Indians all over the rest of the Nation. You might then ask why it has separate treatment. The reason for that, the genesis of those differences, comes from the separate jurisdictional statutes affecting the State of Oklahoma.

That legislation has created a great deal of confusion and uncertainty about the status of the tribes.

Mr. MEEDS. Which legislation was that?

Mr. WHARTON. There are a couple. There was the Territorial Act, the Organic Act, and the Statehood Acts of Oklahoma, the Curtis Act of 1906, with respect to the Five Civilized Tribes in the eastern part of Oklahoma.

There are a number of specific statutes in title 25 which separate out Oklahoma Indians for special treatment. An example would be the State of Oklahoma exercises jurisdiction specifically by statute over probate matters, putting those matters into the court of the State and allowing through that process the loss of significant amounts of Indian land.

I think it needs to be noted western and eastern Oklahoma are significantly different in the laws that affect them. The laws are different. The United Tribes of Western Oklahoma and Kansas have been to Washington, D.C., particularly in the last 3 years to ask the Department of the Interior to assist them in clarifying the status of those laws. Interior has failed to do that in the first two requests and has finally contracted with that organization to do a paper for them. That paper is now in process.

So there has been some minimal steps to begin to clarify that situation. There is in the U.S. District Court of Western Oklahoma at this time a hunting and fishing case filed by the Cheyenne and Arapaho Tribes, to clarify their hunting rights.

I think the whole history of the development of Oklahoma sets up why they are in the position they are in, Oklahoma being originally designated as that part of the country which was to be Indian country.

They moved Indian tribes from virtually every direction of the compass into Oklahoma, the boundaries of the reservations established in the State take in virtually the entirety of the State. There is no specific piece of legislation which has ever disestablished those boundaries with the exception I think of the Ponca and Otoe-Missouria Tribes.

So the issue of the reservation boundaries is still very much alive in the State. That creates problems for both the State and the Indian people there.

We are in the process of developing now for the Commission an extensive historical document on Oklahoma that will be ready at the January meeting. From the results of most of the hearings from the task forces and from the testimony of the tribes and the people of Oklahoma, it is our opinion that one of the recommendations we will make to the Commission is that Congress undertake a special study of the problems in Oklahoma that is universally supported by the western tribes and by most of the eastern tribes.

Mr. MEEDS. Any questions or comments by the members of the Commission?

Mr. WHITECROW. Mr. Chairman, as a Commissioner sitting on this Commission from the State of Oklahoma, I would like to insert into the record some comments in regard to statements received by the Creek Tribe; for the benefit of Commissioner Dial, it is only 25 pages in length.

Mr. MEEDS. Without objection, it will be received.

Mr. WHITECROW. The Creek Tribe, I would like to inform the Commission, I did on the third of November send out a letter to the chiefs and second chiefs of all of the tribes in the State of Oklahoma plus those tribes in the State of Kansas delivering in their hands summary statements and the recommendations of each of the 11 task forces and bringing to their attention also the BIA management study and its preliminary recommendations.

I also brought to their attention some general comments which I felt were most appropriate and would be issues of this particular meeting. Those being issues regarding jurisdiction, sovereignty, trust relationships and also the deliberations that would come about insofar as recommending a definition of a tribe and the identification of an Indian.

I also requested their thoughts in regard to a continuation of health and educational and other services along with what their recommendations might be in regard to funding necessary for them to begin reclaiming their land base and to develop economic enterprises which would allow self-sufficiency to come about for each of the tribes within those areas.

I would like to just in summary state what the chief of the Creek Nation states: The concept of tribal sovereignty is the single most important philosophy to define the entire Federal/Indian relationship. Philosophically, sovereignty belongs to the entire people of the nation. The people of any nation have the right to utilize the sovereignty by creating a government and delegating certain sovereign powers to it. Only those powers delegated to a government by its people are legitimate. The government is not sovereign in and of itself, but it exercises those sovereign powers which its people have chosen to give it. While it is prohibited from exercising those powers which the people have kept from it, the U.S. people have never specifically ordained the U.S. Government to exercise plenary powers over the respective nations of American Indians and their governments.

The regulation of commerce of the Indian nations, the making of treaties and powers logically derive from the warmaking powers of government, and these are the only three areas where constitutionality and legitimately the U.S. Government is empowered to interact with Indian nations.

In the subject of jurisdiction I would like to read this: Jurisdiction is the combination of methods which a government uses in the legitimate exercise of its sovereignty. Traditionally, in both Creek and European governments those methods are categorized into executive jurisdiction, legislative jurisdiction, and judicial jurisdiction. In the exercise of jurisdiction, certain tools are utilized and those tools provide metes and bounds within which the jurisdiction can be exercised and without which it cannot. Each of the legitimate branches of Creek government has suffered from the brutal policies of the Department of the Interior, often with the approval of Congress. The Creek courts were closed never to reopen. The national council was first emasculated by provisions of Federal law which flagrantly rendered tribal laws unenforceable. And then the council was disbanded through a series of events which Judge Bryant described so well in a recent case whereby it was ruled the original Creek constitution of 1867 was still in effect, and as such the original Creek tribal government was the governing body for the Creek Nation.

In the aspect of taxation a statement is made here also, in the definition of tribes, the tribal government—I would like to read this for the interest of the Commissioners at the present time.

Chief Cox states:

> Our response to the task force recommendations you provided will be forwarded prior to the December meeting. I am sorry time did not permit the development of adequate responses. However, I can assure you our December letter will be supportive of the task force recommendations with additional recommendations based upon our tribal perspective and goals.

This gives us a pretty good line of thought with this letter insofar as the attitude of the Creek Nation and pretty well exemplifies the attitude of the other tribes within the State to a great extent.

This letter pretty well spells out the fact the tribes do feel the original geographic areas by treaty are still in effect and inasmuch as we have not yet found any legislation or court action that in effect does detract or take away or abolish that original treaty geographic boundary area, the tribes feel, and evidently the courts back it up, that those original geographic areas are still in effect and they do have jurisdiction. And this is one tribe that has expressed its desire to resume its responsibility to the people.

Mr. MEEDS. Questions or comments by the Commission or by the staff?

Mr. TAYLOR. I might speak to the Oklahoma situation for a moment. Don Wharton and I were present at 4 days of hearings in the State of Oklahoma, taking testimony on a whole range of issues including Federal administration, reservation boundaries, problems with natural resources, problems with land base.

As Don has said, we found many problems in the State of Oklahoma which are very, very similar to problems of tribes in other States. This is particularly true in connection with Federal administration, delivery of services, CETA type problems, IHS, urban Indian problems in the State of Oklahoma.

In the matter of jurisdiction, as Don has pointed out, there are very complicating factors in the State of Oklahoma. The specific legislation Don alluded to is a very difficult problem. It is one of the first letters we received on our task force 9, I believe, from the Chief of the Creek Nation, enclosing a copy of the Curtis act and the act of 1906. It is an incredibly shocking document, when it is understood what we do to those tribes.

I realize this is history. I am sure you, Mr. Meeds, are quite well aware of it as well as all of the other Indian Commissioners who are here. I think what we are looking toward in Oklahoma is to try to develop some jurisdictional system which could enable these tribes to restore their tribal government, get back on their feet, reacquire a land base and exercise jurisdictional capabilities that would be commensurate with the historical pattern of Oklahoma. As Don says, the entire State is comprised of reservation boundaries or areas which either were reservations or continue to be to this day by reason of not having been formally disestablished. There is a rather confusing jurisdictional picture that emerges because of judicial decisions. In fact, an additional sidelight to these problems, in 1953 when Public Law 280 was being developed, the Governor of the State of Oklahoma was contacted to find out whether he wanted his tribes in the State to be brought under the act; his reply was it was not necessary, they already had jurisdiction.

In fact, there was no specific legislation that ever transferred jurisdiction from the United States to the State of Oklahoma, at least in the western half of that State; the historical picture in Oklahoma indicates tribal courts survived in the western half of that State up until the 1940's I believe.

This is a pattern of conduct which would be totally inconsistent if the reservations had been disestablished or the tribes terminated. What I am saying here is there is a confusing jurisdictional picture in the State of Oklahoma. The reservation patterns within the State are unique, and we are working to develop some specific recommendations that would address the problems that we found in that State.

Mr. **Meeds.** Further comments or questions? If not, thank you very much.

Mr. **Whitecrow.** Mr. Chairman, before we proceed and realizing we do have some special recommendations to look forward to in our coming meeting in January, I would like to notify Commissioner Dial we are now ready to move on to South Carolina.

Mr. **Meeds.** Thank you very much, gentlemen. The next order of business is chapter 11, terminated Indians.

Don Wharton also has the lead responsibility on this.

Mr. **Wharton.** With respect to terminated Indians, if you will turn to page 15 of that chapter, you will find we are asking the Commission to adopt general provisions proposed beginning at page 13 of that chapter.

Congressman **Meeds.** This was the work of what task forces?

Mr. **Wharton.** This was the work of task force 10, specifically given the responsibility to address terminated and nonrecognized Indian people.

Mr. **Meeds.** What is the staff's opinion of the work done by the task force and the basis of the recommendations made? Is it well supported and documented?

Mr. **Wharton.** With respect to terminated Indians which this chapter addresses, I think the task force work in this area was quite good, particularly as reflected in their proposed recommendations for legislation on how to deal with the problem.

Mr. **Meeds.** Would you like to proceed to summarize the recommendations beginning on page 13?

Mr. **Wharton.** This particular list of recommendations comes specifically out of a paper developed by Charles Wilkinson submitted to the task force suggesting to Congress how they might deal with this problem.

It sets up first of all congressional policy which would reverse the policy set forth specifically in House Concurrent Resolution 108, which as you know is the one that sets forth the policy of termination and assimilation, although there has been subsequent legislation which in spirit reverses that policy, House Concurrent Resolution 108 has never been specifically renounced.

As a first step, they would suggest that ought to be done. Ernie Stevens has spoken many times about the problems of the termination monster and what sort of psychological effects that has on Indian people and how they behave and expect the Congress to behave. Removal of that resolution or renouncing that resolution would go far toward assuring Indian people of Congress' intent not to follow that policy any further.

It also has impacts with respect to how the Federal agencies deal with the Indian people. It has been the finding and the impression of many of the people on the task forces in taking testimony of Indian people that there are Federal administrators throughout the system which still reflect the termination policy in the way they administer to Indian affairs, and that is their view of the Govenrment's policy in dealing in Indian affairs. That is the beginning; and to renounce House Concurrent Resolution 108.

Mr. **Meeds.** Can you point to any specific acts in the past 2 years by individuals or a policy of a bureau or any other Federal agency which support what you just said?

Mr. ALEXANDER. There is substantial feeling, at least in southern California, that Public Law 638 as explained to Indian people by Bureau officials is termination legislation. And that view was expressed to us time and time again in southern California by tribal officials who base their information on Bureau explanations.

Mr. MEEDS. Are there any papers, directives, or orders, which contain this explanation?

Mr. ALEXANDER. The Bureau's explanation of 638 on paper is extremely complicated and complex. Most of the communications we hear about in Indian country are not official directives, but the implicit and sometimes explicit statements "off the record" by Bureau officials to Indian official tribal people, tribal leaders, particularly in the 638 context which I am most familiar with.

As a matter of fact in our hearings in Escondido a number of tribal officials came with posters or placards saying "638 is a guise for termination" and handing out leaflets to that effect.

No amount of explanation on our part as to what the congressional intention was, was sufficient to overturn what has been termed by Ernie Stevens as the "termination monster". And there is tribal experience relating to the southern part of Arizona where tribes have contracted—the Apaches particularly—for law enforcement services to find their funds under those contracts stagnating and not increasing, being forced—with inflation—to turn those functions back to the Bureau and then the Bureau's budget was increased by 50 percent. The tribes view suspiciously many of these programs.

To put it straight, many of the tribes feel the Bureau is standing around and sort of out of the corner of their mouths saying we are going to let you do this and we are going to let you do it in such a way that you fail, and we are kind of hoping that you fail.

There is great fear. To repeat what Mr. Wharton said, the continued existence of House Resolution 108 adds substance to that fear.

Mr. TAYLOR. Mr. Chairman, if I could address myself to the 638 problem for a moment, I think the best explanation I heard was when Alan Parker testified here, I believe for the third quarter report. One of the great concerns about the contracting procedure is that if the tribes take over programs there is less need for personnel in the Bureau of Indian Affairs. However, the BIA continues to have responsibility in other areas with respect to other tribes.

Typically because of OMB and the Secretary of Interior and the budget process, BIA, as with every Federal agency, does not get enough funds to do its job right. So as their problems mount in an area where they continue to have responsibility, the BIA tends to cut back on that funding which goes to the tribes under Public Law 638 in order that they can perform their own functions properly.

As the tribe that contracted the program starts to go under, they turn around to BIA and say, hey, man, we can't do it; take it back—BIA is then in the position, due to attrition of personnel, of saying we don't have the personnel, we can't do it. But BIA does take the program back. At least this has been a pattern under 638. Whether that pattern will be able to continue—but when BIA pulls the program back, then they pull the plug in other necessary funding.

I think these fears are very legitimate. I am not privy to any of these rumors of the Bureau of Indian Affairs threatening people, but I have heard of some of them. I am inclined to be a little dubious about it.

I do feel the concern is very legitimate and I suspect the concern of BIA is also very legitimate. I think part of this arises through the funding process. Perhaps if there could be some sort of long-term funding which I think would fit very much into Ernie's concepts, number one, in budget processing, number two, on needs for economic development, that might help alleviate some of these fears.

But I don't think these fears are totally groundless.

Mr. MEEDS. They are a natural consequence of the very bureau whose existence is dependent upon what it is doing now, administering legislation which will cut into that turf. I think it is a natural and approximate consequence of the situation in which they are placed.

Mr. TAYLOR. There is clearly a conflict of interest there, which is what I think you are saying. By the same token, as the tribes look at this and as I think the BIA looks at it, down the road there does come a threat of eventual termination of the Federal trust responsibility. This is a legitimate concern and I think we must address it.

Probably we will be able to handle some of that in Federal administration and economic development. I might say Task Force Number Two dealt rather clearly with this 638 funding problem.

Mr. DEER. I would like to have clarified for my own information, I have heard the resolutions of Congress only pertain to that particular session of Congress and at the end, the resolutions no longer apply. On the other hand, we have this resolution that stands on the books.

I would like to know if some action needs to be taken by the House to repudiate that action?

Mr. MEEDS. As Commissioner Deer will recall, we discussed this matter a number of years ago and took that action which we felt would be the most permanent one. And which bound the Congress more than a concurrent resolution. That was the restoration of the Menominee. I don't know what more proof is needed.

But obviously, facing that issue head on and saying straightaway the passage of a certain resolution wipes out the policy of 108, I don't think that is a difficult task.

Mr. DEER. I have heard that pertains to the Menominee, but what about the rest of us?

Mr. BRUCE. Mr. Chairman, the Menominee restoration which was addressed in 1973 at that time why didn't it include, why wasn't a general restoration act passed? As I recall, it would be on a tribe-by-tribe basis. That is why it was not included in the general restoration act at that time.

Mr. MEED. If I could answer the question, there are a number of reasons why a general restoration act was not passed. The only tribe which had done its homework and was in a position to be restored at that time was the Menominee. It was felt that we should proceed with that as indicative of the mood of the Congress. The Congress at least was prepared to take these on an ad hoc one-by-one basis.

I think personally, the suggestion of the task force and the staff here for some omnibus restoration legislation, along certain guidelines, and certain methods, is a good suggestion. Then you can make it in effect an administrative matter which makes it much easier.

Mr. BRUCE. What you are saying, Commissioner, instead of repealing 108, the passing of the Menominee Act eliminates 108? As I interpret it? We have been trying to get that House concurrent resolution repealed. We have had some difficulty and it always crops up a number of times.

I wonder what the explanation is for not being able to repeal it. If it wasn't there, we would all feel a lot better.

Mr. MEEDS. I think primarily because nobody has ever tried very hard to repeal it. The conclusion by some of us who were involved was that the best evidence of the change in policy was to restore to the tribes which had been terminated, and that ought to be pretty graphic evidence of repudiation of the policy under which termination took place.

If there is still a big question in the Indian world, I don't think I see any problem with repudiation of 108 specifically.

Mr. WHITECROW. Mr. Chairman, if I may, I would like to allude to this situation for just a moment. Inasmuch as in the northeast corner of Oklahoma from whence I came and hope to go back, we have the only terminated tribes in the State of Oklahoma in that immediate area, and I can certainly attest to the fact this restoration is an absolute necessity if we "continue allowing people to work with Indian people." Because that in effect has brought about a conflict within our area as to recognized Indians fighting to terminate Indians and in effect could perhaps bring some violence in our area because of the atmosphere that has been developed just in the past 2 years in regard to recognition of Indians.

Does the termination bill itself really, in effect, terminate a person's heritage? Does this congressional act terminate an individual's heritage as an Indian? This is a tremendous problem we have in our area and I can also attest to the fact that within the Bureau structure we still have OE's within that system who still feel House Concurrent Resolution 108 is still the policy of the Congress until it repudiates it officially.

Mr. MEEDS. Further questions or suggestions by the Commission or by the staff?

Mr. WHARTON. To the extent the specific philosophy of this suggested recommendation is to provide an administrative process where the tribes sit down individualy with the Secretary of the Interior and negotiate with that individual a restoration process which is then ratified by Congress.

I guess the particulars are not necessary but that is the philosophy of these recommendations.

Mr. MEEDS. I guess the Congress passes a general act and then proceeds——

Mr. ALEXANDER. In working out some of these, we will look to the restoration experience of the Menominee and the experience on time frames and negotiations Commissioner Deer has expressed, the necessity of involving the State at the discussion levels so there will not be uncertainty as to transfer of functions and so on. We will take those factors into account.

Mr. WHARTON. I would point out one other provision rather important on page 14, number six, that is nothing in the act alters preexisting rights or obligations or affects the status of any federally recognized tribe.

As you know, with respect to the Klamaths and previously with the Menominee, there are preexisting treaty rights which were not terminated in the termination process and nothing in the Restoration Act would be construed to affect those rights as they exist today.

It also is becoming an issue——

Mr. BRUCE. Interim recommendations, whose recommendation was that? Definition of an Indian?

Mr. WHARTON. Task Force 10. That is taken from the task force report.

Mr. BRUCE. It is under recommendations.

Mr. WHARTON. We are not suggesting that as a staff, we are reporting that as a task force recommendation.

Mr. BRUCE. I read up there that Congress should in the meantime do the following, and it is listed under the following. Also, I want to call your attention to item four, direct the GAO to immediately proceed with full and complete investigations of the trust mismanagement of assets.

Is that a recommendation?

Mr. ALEXANDER. What we were attempting to get consensus on today was the restoration process. We are not specifically prepared to adopt the specific recommendations. As a general proposition, we tend to have staff support, but we were focusing on broader issues, how to establish a restoration process. When we come back to you in January with the draft, we will be very specific on implementing the recommendations that in terms of Indian recognition, other task forces have come up with other alternatives and the resolution of that is going to have to occur between now and January.

Mr. WHARTON. I expect we will have some of these recommendations as you see them when we come back in January, number four in particular. As you well know, there were substantial conferences, there is a real problem of how those were handled in the termination process. So I imagine we will have some recommendations when we return with respect to those.

Mr. WHITECROW. These are not staff recommendations here?

Mr. ALEXANDER. We are not adopting them at this point in time because of the necessity to touch each of the issues. The most important issue is the restoration. Congress should consistently repudiate Concurrent Resolution 108. It will require tribe-by-tribe negotiation then, but that it be the policy of the United States to restore tribes.

What we are doing is asking you in a sense to consent to our direction on that chapter and then we will work out recommendations jumping off from what the task force said. But we have not evaluated each and every one of those recommendations.

Mr. WHITECROW. In that event, I would suggest we make it very clear that this definition of Indian is not the Commission's recommendation but rather a definition to be considered.

Mr. WHARTON. I would expand that to all of the recommendations at this time.

Mr. WHITECROW. What I am fearful of is if that definition should get out——

Mr. BRUCE. It does include Alaska Natives.

Mr. ALEXANDER. Commissioner Whitecrow, page 15, it says—we are quite specific in what we are asking for which is at this point the adoption of the general provisions of the proposed legislation because we are going to have to work out this area of the interim recommendations. If you have specific questions or criticism or critique of that statement. On page 14:

> for the purpose of services, programs and benefits, direct all Federal Departments and agencies to serve all Indians, notwithstanding provisions of the laws to the contrary regarding specific tribes and appropriate funds necessary to carry out the directive.

If you would like to give us your views on that for our edification we would appreciate it.

Mr. DEER. Do we have any idea of how many tribes we are talking about?

Mr. WHARTON. That is listed on page 1 of this chapter.

Mr. WHITECROW. Is this a complete list?

Mr. WHARTON. To the best of my knowledge, Commissioner, it is.

Mr. WHITECROW. This would include all of those Agua Calientes in California?

Mr. WHARTON. Only by reference, yes.

Mr. WHITECROW. If I understand you correctly, these are interim recommendations. You are recommending all services, programs, and benefits would be immediately available in the interim?

Mr. WHARTON. We are not making any interim recommendations at this time.

Mr. ALEXANDER. That is task force 10's recommendation and that hopefully will be circulated for comment and criticism as soon as that task force is published and available. It is not a staff recommendation, however.

Mr. TAYLOR. I think we could use some guidance, Commissioner. On page 14, paragraph 2, that has the definition. If the consensus of this Commission is opposed to that definition, right now I think we ought to take it out before it is circulated. Task Force 10's report; we are preparing a final report.

Mr. WHITECROW. If I may comment upon this, again, I would like to refer to the sovereign issue. If we come through with any sort of legislative definition of an Indian as to who is an Indian, what is an Indian, I feel we are impinging upon the sovereignty of the tribe in allowing that particular tribe to determine who its own members are.

Mr. MEEDS. I don't see this definition as doing that at all. It says whoever is a member or descendant of a member of a North American tribe. If you have tribes define their membership then that person would be——

Mr. WHITECROW. The descendant of a member is the issue I am concerned with here, because we do have some tribal constitutions that do not recognize all descendants. They have got to go through the membership process.

Mr. DIAL. Mr. Chairman, a couple of days ago we passed a motion on recognition. Perhaps they could work out something on definition along with this. You don't have time to settle it now. Paul and the boys are to bring something back to the next meeting on the next step dealing with recognition; why couldn't they deal with definition also?

Mr. MEEDS. My personal belief is that if we terminated our work and write our report without a definition of who is an Indian, we will have failed miserably in our recommendations.

Mr. DIAL. I agree. I am not saying I have any hangups here with this definition but some apparently have a hangup with the definition and I am just speaking for myself because I am getting ready to walk out and then you won't have a quorum and you are going to be in the same position—I have to catch a flight at 3:20, if you are going to have a vote——

Mr. MEEDS. Maybe we could do as the Plains Indians used to do, operate by consensus. I would suggest the staff provide us with some recommendations, maybe a number of alternatives, for the definition of who is an Indian. That way we would have a number of alternatives for that definition, to vote on at our next meeting.

Is that acceptable?

Mr. DIAL. Very good.

Mr. DEER. I would like to also suggest we have some alternatives for definition of tribe. I think we need to have some real thought given to that also.

Mr. MEEDS. I think that is an excellent suggestion. Obviously the key to establishing who is an Indian, f we want to recommend something, is going to be establishing what is a tribe or recognized entity.

I have no objection to that. Is there any objection to alternative definitions?

Very well.

Mr. ALEXANDER. We will work in this direction and indicate to you when we produce this in January what is the preference of the Indian country in this area.

Mr. MEEDS. Also, some alternatives for what is Indian country?

Mr. ALEXANDER. No; I am saying picking up on what Senator Abourezk said. Consistent with what Senator Abourzek said and others on the panel have mentioned, when we work out what are reasonable alternatives, we will indicate to you what the Indian view is of these alternatives, including an alternative for no definition.

Mr. MEEDS. Could I also at least personally ask—maybe I already did this—other recommendations as to what is a reservation. You will recall back in the tribal government section there was a recommendation for original boundaries for reservations and we asked for the map and everything. If it is not too much work, I would ask you personally to work out a definition which would encompass presently existing boundaries of reservations.

Mr. TAYLOR. We will.

Mr. MEEDS. Are there further comments or questions? If not, very well, thank you very much, gentlemen. The last section is the general provisions section which is chapter 15 and which, as I recall, we started to discuss and then we decided we would discuss the more specific recommendations.

Could we spend 20 minutes on this section? It is the intent of the Chair to adjourn at 3 o'clock.

Would you please proceed with the explanation and discussion of the specific recommendations?

Mr. ALEXANDER. This is a three part chapter. The first part contains the general state of knowledge concerning Indian affairs. The second part deals with our statutory mandate to consider alternative elective Indian bodies. The third part is specifically dealing with task force 9's report on revision and consolidation of 25 U.S.C.

On the first page, the state of knowledge concerning Indian affairs, I think it has been obvious from our discussion the last 4 or 5 days that continuous reference has been made to the lack of knowledge among the citizenry in general and in particular those people dealing in Indian affairs. And, in fact, our view is that there is lack of knowledge of the legal basis of the United States/tribal relationship, what the relationship of that is and what we are recommending is essentially mandatory training on Indian history, legal status and culture for any government employee administering programs in Indian affairs; that is State and Federal and it would be tied to Federal funding on the State and local thing to obviate any need to perceive a constitutional problem.

What we would also like to do is have the educational institutions of this country through Congress and through some research and experimentation, take a good hard look at the curricula they use today and incorporate into that curricula accurate views of American history, particularly Indian history, and the historical facts concerning the Federal/Indian relationship.

We have mentioned it before but it permeates all areas. You can go to the finest law school in this country and be a law journal student and what-have-you and not know one iota of information concerning Federal/Indian relations. You can go to a graduate school in this country and operate on a daily basis affecting Indian children and not know who you are dealing with, not know what the political status of the tribe you are interacting with. It just does not exist. It seems to me it needs a major congressional effort in this area, and that is what we are recommending.

If you like, I can wait until the end of the whole chapter and we can take questions on specific components.

The second part is alternative elected bodies. Simply put, what we are saying is there is no consensus in Indian country at the present time as to what method or mechanism would be appropriate, if any, for direct input into the congressional process, whether it be a nonvoting delegate, whether it be an elected commission of some sort, an elected Congressman. What we are saying is there should be no congressional action in this area until the Indian people have a chance to formulate their views and at that time Congress should be responsive. It is not mandatory responsiveness, of course, but in good faith be responsive, and this report should highlight what some of the current options are, what some of the pro's and con's of those options are and we recommend no specific action for any of the particular alternatives.

The third section of this report deals with task force 9 and our general staff—we agree it is the finest of all of the task force reports in our view. It is an extremely complex piece of work and the concept is it is an ongoing piece of work. What we are saying is it is to the point and it should be submitted to the Congress, presumably the Judiciary Committee, or a joint committee of both Judiciary Committees, with a recommendation that staff be provided to continue that work to fruition with hearing processes and allowing for additional Indian input and other input.

Mr. TAYLOR. I think this consultation process is extremely important. I would like to relate a specific incident as to why I say that. After our report came out, it was reviewed by various congressional staff, et cetera, and I received a call from your staff, Mr. Meeds, Mr. Ducheneaux, Frank Ducheneaux. Frank's comment was: "I see you say section 474, it is probably obsolete, consider repealing it." I immediately grabbed my code and started thumbing it madly. I knew he had something in store for me. It is a statute that appears obsolete on its face. It relates to Indian treaty claims based on an act of 1889. In fact, he advised me I had better not come out to the Cheyenne River for quite a while because every child that comes of age, 18 years old, gets a $1,000 payment.

So this illustrates the kind of problems that are built into these proposals. I think it is vitally important the Indian community be consulted on these.

Commissioner WHITECROW. I have one question. One of the recommendations here is that a union of Indian nations be established, to serve as a recognized, unofficial committee of Congress. I wonder if this isn't set up properly, wouldn't it also not be infringing upon the sovereign rights of a tribe in recommending these kinds of organizational concepts? Should this not be allowed to be normal process by development with intertribal and tribal relationships?

Mr. ALEXANDER. To reiterate, we are not recommending any of the specific proposals. You can take that union concept and say the tribes let it be established permissively rather than mandatorily, and tribes, if they so seek could perform such a thing; that is the act of a sovereign; a sovereign can enter into agreements to share responsibilities.

Mr. WHITECROW. That is my point then in total, Paul. If we are recommending these kind of actions, perhaps it might be better if we would just recognize this is a possibility of development rather than recommending as a Commission that this come about.

Mr. ALEXANDER. My view is we are not going to recommend anything specific. We will lay out some of these suggestions that have been generated from tribal people and discuss them. We have no view.

Mr. MEEDS. Could you give us your opinion as to which of these recommendations, if adopted, would require constitutional amendments? It is clear to me some of them would.

Mr. Alexander. It is like the—there are arguments that could be made under plenary powers about constitutional amendments. It is, however, the staff view that some of the major kinds of shifts require constitutional amendments.

Mr. MEEDS. Two or three on page 4 would clearly require constitutional amendment.

Mr. ALEXANDER. That could be argued and that would be pointed out in the staff discussion in the text of the report.

Mr. WHITECROW. Mr. Chairman, would you mind pointing out to a layman which of these points on page 4 would require constitutional amendments?

Mr. MEEDS. A quick reading of 2 and 3 indicate both.

Mr. ALEXANDER. Setting up a body of power within the U.S. Congress made up of elected—I am not quite sure how the election would be organized—representatives from Indian country, be it by tribe or region or what.

Mr. MEEDS. I think probably 3 under (b) would also. Are there further comments or questions?

Mr. WHITCROW. On page 3 under recommendation (a), would that also require constitutional amendment?

Mr. ALEXANDER. To the extent we are talking about a voting member with full congressional power, not as I said previously a nonvoting delegate which is one of the options that has been talked about. Those are recommendations that come from a number of task force reports, primarily task force 3. And in our staff recommendation we have really not adopted any specific one. There is no consensus in Indian country. Some of these proposals are something people are just starting to think about. Some were generated by the task forces themselves.

Ms. DEER. I would like to commend the staff for excellent work. I know they have put in many hard hours of consultation and really burning the midnight oil. This means the total staff. I think the alternatives and analyses and discussion that have been presented to us have been outstanding, and I would like to express my appreciation as a Commissioner to the entire staff and look forward to our next meeting with some more of your excellent staff work.

Mr. MEEDS. I, too, would like to take the opportunity to commend the staff. Although I have some disagreement with some of the recommendations made by the staff, I don't recall having been treated to better staff work. I think the staff has done a tremendous job and has given a very creditable performance for this Commission.

Mr. ALEXANDER. We thank you. I would like to point out, that you see generally up here the white-collar component of out staff and I would personally like to thank the clerical people who have just done an incredible job for us—all the way through. Rarely do they get the kind of recognition they should. They have just been terrific.

Mr. WHITECROW. Mr. Chairman, I would also like to join with the rest of the Commissioners in thanking the staff for an outstanding job and I would also like to include in that staff, every clerk, every stenographer, everyone who has anything to do with the Commission.

I would also like to enter into the record the statement I read from the Washington Post, Tuesday, November 23, 1976, from Jack Anderson and Les Whitten's column, whereby I think it is quite appropriate to read it here. They are talking about the past Presidents, and whereby they are indicating the Archives plans to assign 100 workers to do the cataloging of the President's papers once the courts ever turn 'them loose and it will be an exhaustive chore which will last until about 1981. I would like to state this.

We are doing and we have done about 300 years of research with this particular congressional Commission and I think we are doing an outstanding job of putting together a set of papers that will go down in history and certainly it is not going to be quite as expensive as this exhaustive work mentioned here that is being developed just to preserve the papers of one man, regardless of whether or not he deserved the very top level of this Nation. He is one person.

We are talking about millions of people.

[From the Washington Post, Nov. 23, 1976]

Jack Anderson and Les Whitten

DELAY LIKELY ON AIRING NIXON DATA

The public has the mistaken impression that Jimmy Carter, once he's installed in the White House, will be able to release Richard Nixon's tapes and records. They contain many dark secrets, which still hang over the Nixon years.

But our sources say it will take at least five years, even with favorable court rulings to break loose the controversial tapes and letters. Jimmy Carter will have little, if anything, to say about it.

Some 900 rolls of tapes, containing the conversations of Nixon and his aides inside the Oval Office, remain under court seal. Another 36 million to 42 million pieces of paper are also locked up awaiting court action.

Congress has already enacted special legislation, giving the government control of the Nixon material. But the former President has successfully tied up their release in the courts.

The most sensitive papers and all the tapes, meanwhile, are stored in the Executive Office Building, adjoining the White House. The bulk of the material is kept under guard in the General Services Administration's warehouse in Suitland, Md.

The Supreme Court, if it agrees with a lower court ruling, could uphold Congress in a few weeks. Or, the Supreme Court may ask for oral arguments and hold off a ruling until next year.

Even if the Supreme Court rules against Nixon, he can file a second suit on constitutional grounds and start the whole process over. This would extend the secrecy at least until the fall of 1978.

Once the courts clear the way, GSA is drafting regulations that would permit the release of almost everything contained in the tapes and papers. The Archives plans to assign 100 workers to do the cataloging. But this exhaustive chore would take until about 1981.

Eventually, the Nixon papers and tapes will be open to the public, the courts willing, in 11 different cities. The only material that would be withheld would be Nixon's personal papers such as letters to his wife, military secrets, information that might interfere with a fair trial, documents that violate the privacy act, and perhaps a few other categories.

But nothing is likely to be available during Carter's first term.

I did want to put that into the record. Before we adjourn, Mr. Chairman, I would like to also read from the 10 points of what our historian says in regard to the concept of the work and reading from this book, "They Came Here First," and the last page states, and I think this is quite appropriate to the work of this Commission, as you recall in the preface of this book at the beginning of this meeting and we are talking about a Hopi villager and his sheep:

> The time has come to show faith in the democratic process which the nation avowedly practices. The Hopi speaker gave practical meaning to that avowal. Let him pray for the rain that would bring grass and save his sheep. If the white man wanted to count the sheep, that was his concern. The Hopi had a world to keep in order and counting sheep interfered with what he had to do. If the nation is ever to demonstrate the moral strength of the democratic process, it must find it possible to allow the Hopi villager to make his own adjustments within a changing world society. Men born out of Europe came to power by insisting on such a course for themselves. The possibility of such an accommodation is within reach at remarkably little cost and even with some gain in honor and self respect. Where the Jackson era has passed, the nation has no need now to express contempt for the people whose accomplishments of the world is told briefly. The decision was made long ago not to exterminate the Indian people. Let the decision now be made to respect their right to survive in their light.

With that I will thank the Commissioners for allowing me to be a little dramatic, taking a little time, and I hope to see you all bright-eyed and bushy-tailed about the 6th day of January. I do wish you all a happy Thanksgiving and a merry Christmas.

Mr. Bruce. I would like to say he needn't worry, we will endorse him for Secretary of Agriculture in the new Cabinet. I would like to also take this opportunity to express my appreciation to the staff. I know what they are doing. They are always there. It seems like we never go home; maybe we don't. But they have been of great help in discussion of different items and they have always been ready to sit down and talk and clarify. So I want to compliment you and the staff for all of your efforts.

I hope you have a good Thanksgiving.

Mr. Borbridge. Mr. Chairman, I was going to say as I listened to the well deserved plaudits to the staff, that I absolutely concur. My encouragement would be to the effect that as we come down the homestretch, this high quality sensitivity to the concerns of the Native Americans will continue. I don't want to say that we have done with good work at this point, but I am rather satisfied that the work will maintain its quality as we move down the homestretch.

One brief point for the record. With respect to the administration of Public Law 93–638, at least as it has occurred in Alaska, I have been very much concerned with the ironic circumstances whereby in Alaska the Alaska Natives have had a proliferation of various local organizations. In the administration of Public Law 93–638, the Juneau area director has exercised his discretion and required that the tribal government body, in this instance the Central Council of Tlingit-Haida in Alaska, gain concurrence through various resolutions from the various local entities. In effect, what has occured here has been a very precise erosion of the sovereignty of an established trial body.

We here are working to honor tribal sovereignty, to recognize it and to define it; yet by regulations today and by interprepation through discretion vested in by BIA officials, we have erosion of tribal sovereignty occurring.

I want to emphasize this. I understand Alaska is not the only place in which this has occurred. We are dealing with an ongoing erosion that must be stopped, not only through the promulgation of new laws but actually through the exercise of a very positive pressure on officials in a position to administer those laws to insure they will proceed from a positive viewpoint; namely, a viewpoint of strengthening the sovereignty of tribal government bodies.

With that, I join all in extending best wishes for a productive and happy Thanksgiving.

Mr. Meeds. The hearing is closed.

[Whereupon, at 2:55 p.m., the meeting was adjoined, to reconvene January 6–7, 1977.]

○

UNIVERSITY OF FLORIDA
3 1262 09116 1405